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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 51.

J. IRVING PEARCE, AS ASSIGNEE OF S. G. HOOKER & COMPANY, APPELLANT,

vs.

JAMES H. RICE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED MAY 12, 1888.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, on Monday, the fourth day of April, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independence the one hundred and eleventh year.

WM. H. BRADLEY, *Clerk.*

THIRD NATIONAL BANK OF CHICAGO *vs.* IRA FOOTE *et al.* } In Chancery. Bill.

and

J. IRVING PEARCE, Assignee, &c., *vs.* THIRD NATIONAL BANK OF CHICAGO *et al.* } Cross-Bill.

and

JAMES H. RICE *vs.* THIRD NATIONAL BANK OF CHICAGO *et al.* } Cross-Bill.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-first day of September, 1882, came the complainant, by its solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, its bond for costs and creditor's bill in said above-entitled cause; which said bond
2 and bill are respectively in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court. October Term, A. D. 1882.

THIRD NATIONAL BANK OF CHICAGO *vs.* IRA FOOTE *et al.* } In Chancery.

I enter myself as security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the complainant of any costs ordered or adjudged to be paid by it I

hereby, as receiver, agree and stipulate that execution may issue against my property for any costs taxed against compl't.

Dated this 21st day of September, A. D. 1882.

HUNTINGTON W. JACKSON,
As Receiver of the Third Nat'l Bank of Chicago.

Endorsed: Filed Sept. 21st, A. D. 1882. Wm. H. Bradley, clerk.

3 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the United States Circuit Court for the Northern District of Illinois, of the October Term, A. D. 1882.

To the judge of said court, in chancery sitting:

Your orator, The Third National Bank of Chicago, a corporation organized and existing under and by virtue of the laws of the United States, respectfully represents unto your honor that at the March term, A. D. 1882, of the United States circuit court for the northern district of Illinois, to wit, on the 17th day of April, 1882, the same being one of the regular days of said term, your orator recovered a judgment against Ira Foote, one of the defendants hereinafter named, for the sum of fourteen thousand six hundred & thirty-five dollars and 55 cents for the damages which it had sustained and the costs of suit and charges of your orator by it about said suit in that behalf expended, which were adjudged to your orator in and by the said court, whereof the said Ira Foote was convicted, as by the record of the said judgment in the office of the clerk of said court, reference being thereto had and to which for greater certainty your orator prays leave to refer, will more fully and at large appear.

And your orator further represents unto your honor that, the said judgment, so recovered in manner aforesaid, remaining
4 in full force and effect and the said damages aforesaid unpaid and unsatisfied, your orator, on or about the 15th day of July, in the year of our Lord one thousand eight hundred and eighty-two, for the purpose of obtaining satisfaction of the said judgment, sued and prosecuted out of the said court a writ of *fieri facias*, directed to the marshal for the district aforesaid, that being the district in which said defendant resided at the time of the issuing of said writ, by which said writ the said marshal was commanded that of the goods, chattels, lands, and tenements of the defendant Ira Foote in his district he cause to be made the sum of fourteen thousand six hundred & sixty-seven dollars and eighty-one cents, which your orator in said United States circuit court recovered against the said defendant, Ira Foote, and that he should have the money at the clerk's office of said court, in said district, in ninety days from the date thereof, to satisfy the judgment so recovered by your orator, and to render to the said plaintiff for its damages and costs as aforesaid, and that he should have*n* then and there that writ.

And your orator further shows that the said writ of *fieri facias*, before the delivery thereof to the said marshal, was duly endorsed, and was afterward, and on or about the 15th day of July, in the year of our Lord one thousand eight hundred and eighty-two, delivered to the said marshal to be executed in due form of law.

And your orator further shows that the said marshal of said district aforesaid, on the 20th day of September, in the year of our Lord one thousand eight hundred and eighty-two, returned
5 on the said writ, to him in that behalf directed and delivered as aforesaid, that by virtue of the within writ he did, on the 20th day of September, 1882, demand of the defendant Ira Foote payment of the amount due thereon or that he turn out property wherewith to satisfy the said writ, and that the same was refused; that he thereupon returned the writ, by order of the attorney for the plaintiff, wholly unsatisfied, as by the said writ of *fieri facias* and the directions and the return of the said marshal endorsed thereon as aforesaid, now on file in the office of the clerk of the said court, will more fully appear, and to which or to a copy thereof your orator prays leave to refer.

And your orator further shows that the said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated, and that the said Ira Foote has not paid the same to your orator, but has hitherto wholly neglected and refused so to do.

And your orator further shows that there is now actually and equitably due to your orator upon the aforesaid judgment the sum of fourteen thousand six hundred & sixty-seven dollars and eighty-one cents, together with the interest thereon from the 17th day of April, one thousand eight hundred and eighty-two, over and above all claims of said defendant by the way of set-off or otherwise.

And your orator well hoped that the said defendant, Ira Foote, would have paid to your orator the amount due it on said judgment or would have applied for that purpose any property, money,
6 debts, or other equitable interests or things in action belonging to him or in which he was or is in any way interested, as in equity and good conscience he ought to have done.

But now so it is, may it please your honor, that the said defendants, with divers other persons to your orator unknown, but whose names, when discovered, it prays may be inserted herein with proper and apt words to charge them, neglect or refuse to pay the amount so due to your orator on its said judgment or to apply for that purpose any property, money, debts, or other equitable interests or things in action belonging to the said defendant, Ira Foote, and for reason whereof the said defendant sets up a variety of unfounded pretences; all of which actings, doings, neglects, and pretences are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator in the premises.

In tender consideration whereof and forasmuch as your orator is remediless in the premises by the strict rules of the common law and cannot have adequate relief save in a court of equity, where matters of this and a similar nature are properly cognizable and relievable—

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed and may upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief full, true, direct, and
7 perfect answer make to all and singular the matters and things hereinbefore stated and charged, and particularly to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written — be required to answer—that is to say, the said defendants may fully set forth and discover, according to the best of their knowledge, remembrance, information, and belief, the nature and situation, amount and value, of all the property, interest, and effects of the said defendant, Ira Foote, including all things in action, of whatever nature or kind, with all the particulars relating thereto, and that they may answer and state whether at the time of filing this your orator's bill of complaint if the said defendant, Ira Foote, has not debts due to him to a considerable amount; and, if so, that they may state particularly the amount of such debts respectively and from whom the same are due and what security is held therefor; and also that they may state which and what amount of said debts are good and collectible and what amount bad or doubtful, and whether at the time of filing this your orator's bill of complaint they have not some property, real or personal, in law or equity belonging to Ira Foote or held in trust for him, or in which he has some beneficial interest of some kind or description, and, if so, that they may state and set forth a full, true, and particular account thereof and the nature and value of said interest therein; and that they may also state whether they have not money of some kind in their possession or under
8 their control or deposited to their credit or for their or his use or in some way or manner held for his use and benefit; and, if so, that they may state and set forth particularly the amount thereof and how and by whom the same is held, and that they may also state whether they have any other equitable interest or thing in action or other means belonging to him or in which he is in any way interested whereby he could pay any part of the amount so as aforesaid due to your orator upon the said judgment against him, the said defendant, Ira Foote.

And if the said defendant last named has made any sale, assignment, or transfer of his property and effects or any part thereof, that then the said defendants may state and set forth, each for themselves, jointly or separately, generally but not in items, what property or effects have been so sold, assigned, or transferred, and the value thereof, and particularly when and to whom and for what purpose and upon what terms and conditions such sale, assignment, or transfer was made and what has been done under such sale, assignment, or transfer, and what has been done with the property or effects so sold, assigned, or transferred and the avails thereof; and that the said defendants may specially state or set forth each for himself, jointly or separately, if they or either of them hold any note or notes or personal property of any kind in which the said Ira Foote

has any interest whatsoever, or whether they know of any one who holds any note or notes or personal property of any kind in which the said Ira Foote has any interest whatsoever, and, if so, to state
9 the name of the person or persons holding said note or notes or personal property as aforesaid; and that the said defendants or some of them may be decreed to pay your orator the amount so as aforesaid due to it for principal and interest on the said judgment, together with your orator's costs and charges in this behalf sustained, and may be decreed to apply for that purpose any money or property, real or personal, in law or equity, debts, choses in action, or equitable interests belonging to said defendant, Ira Foote, or held in trust for him, or in which he in any way or manner is beneficially interested; and that the said defendants may be enjoined and restrained from selling, assigning, transferring, delivering, negotiating, discharging, receiving, collecting, incumbering, or in any way or manner disposing of or intermeddling with any debts or demands due to said Ira Foote, or any bills, bonds, notes, drafts, checks, book accounts, mortgages, judgments, or other debts due to said Ira Foote, whether in their or his possession or held by some other person in trust for him or to his use or benefit; and also from selling, assigning, transferring, or in any manner incumbering or disposing of or intermeddling with any money in coin, bank bills, drafts, or checks belonging to Ira Foote, whether in his or their possession or held by any person in trust for his use or benefit, or any stock or interest in any private or incorporated company, or any property, real or personal, things in action, or chattels real
10 held by him or them or by any other person for him or in which he has any interest whatever, except when such trust has in good faith been executed by or the fund so held in trust has proceeded from some person other than the defendant himself.

And your orator further shows unto your honor — some time prior to obtaining said judgment the said defendant, Ira Foote, was engaged in the mercantile business in the district aforesaid, and that your orator is informed and believes that in the course of the said mercantile business of the said defendant, Ira Foote, divers persons became indebted to him to a large amount, and that the said defendant last named, at the time of filing this your orator's bill of complaint, has debts due to him and for which he holds divers securities and evidences to a large amount, and has divers goods, wares, and merchandise and other articles of personal property which belong to him or in which he in some way or manner is beneficially interested, and that he has equitable interests and things in action of some nature or kind which might and ought to be applied to the payment of your orator's said judgment against him, the said defendant, Ira Foote.

And your orator also charges that the said defendant, Ira Foote, is the owner of or in some way or manner beneficially interested in some real estate in this or some other State or some chattels real of some name or kind or some contract or agreement relating
11 to real estate or the rents, issues, and profits of some real estate, and also that the said defendant, Ira Foote, is the owner

of or in some way beneficially interested in the stock of some company incorporated or unincorporated or in the profits of some company or copartnership, and also that he has in his possession at the time of the filing of this your orator's bill of complaint some money in coin or bank bills, or that he has money deposited in some bank or elsewhere to his credit, or that he has money or securities for the payment of money held by some other person in trust or otherwise for his benefit.

And if the said defendant, Ira Foote, has made any sale, assignment, or transfer of his property or effects or any part thereof your orator expressly charges that such sale, assignment, or transfer is merely colorable and made with a view of protecting the property or effects of said defendant, Ira Foote, so assigned and placing the same beyond the reach of your orator's said judgment and enabling the said defendant, Ira Foote, to control and enjoy the same and the avails thereof or to hinder and delay your orator in the collection of its debt now in judgment as aforesaid, and that so it would appear if the said defendant, Ira Foote, would state and set forth when and to whom such sale, transfer, or assignment was made, and what was the amount in value of the property or effects so sold, assigned, or transferred, and what were the terms upon which said sale, transfer, or assignment was made, and what disposition has been
12 made of the property or effects so sold, assigned, or transferred and in whose possession the same now is or what has been done with the avails thereof.

And your orator claims a full and complete discovery of all such property, effects, and things in action belonging to the said defendant, Ira Foote, and of all trusts whereby any property, debts, or effects are held for the use or benefit of the said defendant last named, and of every sale, assignment, or transfer which the said defendant last named has made of the property, debts, or other effects, and of the person or persons to whom such sale, assignment, or transfer has been made, the amount and value of the property, debts, or other effects so sold, assigned, or transferred, and the trusts and other conditions upon which such sale, assignment, or transfer was made and all the facts and circumstances relating thereto, and particularly what is the situation of the property, debts, or other effects sold, assigned, or transferred at the time of filing this your orator's bill of complaint.

And your orator further shows unto your honor that it has reason to believe and doth believe that the said defendant last named has property and other equitable interests, things in action, or effects of the value of more than five hundred dollars, exclusive of all prior first claims thereon, and which your orator has been unable to reach by execution on said judgment against the said defendants last named, and that this your orator's bill of complaint is not
13 exhibited by collusion with the said defendant or with any other person or for the purpose of protecting the property or effects of said defendant, Ira Foote, against the claims of other creditors, but for the sole purpose of compelling payment and satisfac-

tion of the judgment so as aforesaid recovered by your orator against the defendant Ira Foote.

And that the said defendant last named may also be in like manner prohibited from making any assignment of his property, and from confessing any judgment for the purpose of giving preference to any other creditor over your orator, and from doing any other act to enable other creditors to obtain his property.

And that a receiver may be appointed, according to the course of practice in this court and with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, and effects of the said defendant, Ira Foote.

And that your orator may have such further or such other relief in the premises as the nature of the case shall require and as shall be agreeable to equity and good conscience.

May it please your honor to grant unto your orator the people's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said defendants, Ira Foote, and to *their* counselors, attorneys, solicitors, trustees, and agents, therein and thereby commanding and strictly enjoining the said defendant and the persons before mentioned in manner aforesaid.

14 And may it please your honor to grant unto your orator the people's writ of summons, issuing out of and under the seal of this honorable court, to be directed to the said defendants, Ira Foote, Myron A. Decker, James H. Rice, Wm. H. Wood, James Couch, Caroline E. Couch, the last three as trustees of the estate of Ira Couch, deceased; Lewis H. Bisbee, & S. W. Rawson as trustee, therein and thereby commanding them and each of them, on a certain day and under a certain penalty to be therein inserted, that they personally be and appear before this honorable court on the first day of the next October term thereof, to be held in the northern district of Illinois aforesaid, at Chicago, then and there to answer all and singular the premises and to stand to and abide by and perform such order and decree therein as to your honor shall seem agreeable to equity and good conscience.

And your orator will ever pray, etc.

THE THIRD NATIONAL BANK OF CHICAGO,
By LYMAN & JACKSON, *Its Solicitors.*

LYMAN & JACKSON, *Of Counsel.*

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

On this 21st day of September, one thousand eight hundred and eighty-two, personally came before me Huntington W. Jackson, one of the solicitors of the Third National Bank of Chicago, who,

15 being duly sworn, saith that he is one of the attorneys of the plaintiff, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters and things therein stated

upon information and belief, and as to these matters he believes it to be true.

HUNTINGTON W. JACKSON.

Subscribed and sworn to before me this 21st day of September, A. D. 1882.

E. A. DRUMMOND,
U. S. Com'r.

Endorsed: Filed this 21st day of Sept., A. D. 1882. Wm. H. Bradley, clerk.

On the same day, to wit, on the twenty-first day of September, 1882, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the return of the marshal thereto attached, are in the words and figures following, to wit:

16 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to Ira Foote, Myron A. Decker, James H. Rice, William H. Wood, James Couch, Caroline E. Couch, the last three as trustees of the estate of Ira Couch, deceased; Lewis H. Bisbee, and S. W. Rawson as trustee, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of November next, to answer the bill of complaint of The Third National Bank of Chicago, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, [SEAL.] this twenty-first day of September, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the 107th year.

WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

17 CIRCUIT COURT OF THE UNITED STATES OF AMERICA, } ss:
Northern District of Illinois,

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE, MYRON A. DECKER, JAMES H. RICE, WILLIAM H. WOOD, JAMES COUCH, CAROLINE E. COUCH, the Last Three as Trustees of the Estate of Ira Couch, Deceased; LEWIS H. BISBEE, & S. W. RAWSON as Trustee.

In Chancery.
October Term, A. D. 1882.

To the above-named defendants:

Take notice that the complainant will move this honorable court, on the 5th day of October, A. D. 1882, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within and above named defendants, in accordance with the prayer of the bill therein.

Yours, etc.,

LYMAN & JACKSON &
DENT & BLACK,
Compl't's Solicitors.

Dated this 21st day of Sept., A. D. 1882.

18 *Special Deputy's Return.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois,

Know all men by these presents that I have appointed, and by these presents do appoint, Geo. N. Jones my true and lawful deputy to execute the annexed writ, Third National Bank of Chicago *vs.* Ira Foote *et al.*, and to make return of the execution thereof according to law.

A. M. JONES, [SEAL.]
U. S. Marshal for the Northern District of Illinois.

I have served the annexed writ in the following manner, to wit: Upon Myron A. Decker, James H. Rice, William H. Wood, James Couch, Lewis H. Bisbee, and S. W. Rawson, therein named, on the 21st day of September, A. D. 1882; also upon Ira Foote, therein named, on the 26th day of September, A. D. 1882; also upon Caroline E. Couch therein named, on the 27th day of September, A. D. 1882, by personally delivering to each of them a true copy of the same on the aforesaid days.

A. M. JONES,
United States Marshal,
By GEO. N. JONES,
Special Deputy.

Marshal's fees:
Oath and certificate of service---- $0 25

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

Geo. N. Jones, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return, and that the expense returned by him, in addition to the fees, was actually incurred, and that the same is according to law.

GEO. N. JONES.

Subscribed and sworn to before me this 28 day of Sept., A. D. 1882.
[SEAL.] SAMUEL C. HAYES,
Notary Public.

Endorsed: Filed Oct. 2, A. D. 1882. W. H. Bradley, clerk.

19 Afterwards, to wit, on the second day of October, in the adjourned October term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.* } In Chancery.

On motion of H. W. Jackson, Esq., solicitor for said complainant, leave is hereby given him to amend the bill of complaint herein.

Afterwards, to wit, on the third day of October, 1882, came the complainant, by its solicitors, and filed in said clerk's office its amended bill in said entitled cause; which said amended bill is in the words and figures following, to wit:

Amended Bill.

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

United States Circuit Court, Northern District Illinois.

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.* } In Chancery.

20 Amendment to the above bill of complaint filed by leave of court.

Your orator avers and states as a fact that the said defendant, Ira Foote, is the owner of nearly ⅔ interest in a note originally amounting to about the sum of $15,000, and which said note has been re-

duced by a compromise to about the sum of $13,902, and upon which certain payments have been made, the amount of which to your orator is unknown, said note having been made by William H. Wood, Caroline E. Couch, and James Couch, trustees of the estate of Ira Couch, deceased, and that said note is in the possession of Myron E. Decker, who claims some interest therein.

Your orator makes parties defendant hereto the said Wood, James Couch, and Caroline E. Couch, trustees aforesaid; also the said Decker and James H. Rice, who holds by assignment a judgment of $7,265 rendered in favor of said Ira Foote against J. Irving Pearce, assignee of Stephen G. Hooker & Co.

THIRD NATIONAL BANK OF CHICAGO,
By LYMAN & JACKSON, *Its Att'ys.*

DENT & BLACK, *Of Counsel.*

UNITED STATES OF AMERICA, *Northern District Illinois*, } *ss:*

Huntington W. Jackson, one of the attorneys for the above-named complainant, being duly sworn, states on oath that he has
21 read the foregoing amendment and believes the same to be true.

HUNTINGTON W. JACKSON.

Subscribed and sworn to before me this third day of October, A. D. 1882.

FREDERICK A. ROOT,
[SEAL.] *Notary Public.*

Endorsed: Filed Oct. 3, 1882. Wm. H. Bradley, clerk.

Afterwards, to wit, on the fifth day of October, in the adjourned October term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THIRD NATIONAL BANK OF CHICAGO *vs.* IRA FOOTE *et al.* } In Chancery.

Now comes the complainant, by H. W. Jackson, its solicitor, and calls up his motion for an injunction and the appointment of a receiver as prayed for in the bill herein, and, the defendants and their solicitor failing to appear, on motion of Mr. Jackson the hearing of said motion is postponed until Monday morning next.

22 Afterwards, to wit, on the ninth day of October, 1882, came Huntington W. Jackson and filed in said clerk's office an affidavit in said entitled cause; which said affidavit is in the words and figures following, to wit:

Affidavit.

United States Circuit Court, Northern District of Illinois, October Term.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

THIRD NATIONAL BANK
vs.
IRA FOOTE *et al.*

Huntington W. Jackson, being duly sworn, states that he is one of the attorneys for the above complainant; that on the 29th of September, 1882, a bill in chancery was filed by Ira Foote in the circuit court of Cook county against James H. Couch *et al.*, in which, among other things, the said Ira Foote alleged that he was the owner of a certain note for $15,751.66, and also the owner of two certain other notes, each for the sum of $5,222.00, all of said notes having been made on the 20th day of January, 1877, by James Couch, Caroline E. Couch, and William H. Wood, as trustees under the will of Ira Couch, deceased; that said notes are secured by trust deeds upon real estate situated in Cook county, State of Illinois, as will more fully appear by reference to the files in said cause.

23 HUNTINGTON W. JACKSON.

Subscribed and sworn to before me this 5th day of October, A. D. 1882.

WILLIAM A. HAMILTON,
[SEAL.] *Notary Public.*

Resworn to before me this 8th day of Oct., 1882.
[SEAL.] H. S. STODDARD,
U. S. Com'r.

Endorsed: Filed Oct. 9, 1882. Wm. H. Bradley, clerk.

24 On the same day, to wit, on the ninth day of October, in the adjourned October term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE, MYRON A. DECKER, JAMES H. RICE, William H. Wood, James Couch, Caroline E. Couch, the Last Three as Trustees of the Estate of Ira Couch, Deceased; Lewis H. Bisbee, and S. W. Rawson, Trustee. } In Chancery.

Now comes the complainant, by H. W. Jackson, Esq., its solicitor,

and moves the court for an injunction against the defendants, and it appearing to the court that the defendants have had notice of this application, and the defendants and their solicitor failing to appear and no objection being made, it is ordered by the court that the defendants, Ira Foote, Myron A. Decker, James H. Rice, William H. Wood, James Couch, Lewis H. Bisbee, S. W. Rawson, and Caroline E. Couch, and their counsel, solicitors, trustees, and agents and each and every of them do absolutely desist and refrain from selling, assigning, transferring, delivering, negotiating, discharging, receiving, collecting, incumbering, or in any way or manner disposing of or intermeddling with any debts due to Ira Foote, or any bills, bonds, notes, drafts, books of account, mortgages, judgments, or other debts due to Ira Foote, whether in his possession or held by some other person in trust for him or to his use and benefit, and also from selling, assigning, transferring, or in any other manner incumbering or disposing of or intermeddling with any money in coin, bank bills, drafts, or checks belonging to Ira Foote, whether in his possession or in trust for his use and benefit or in which he has any interest whatsoever, except when such trust has been created by or the funds so held in trust have proceeded from some person other than said defendant, and also that the said defendant, Ira Foote, desist and refrain from confessing any judgment for the purpose of giving preference to any other creditors of said defendant or doing any other act to enable other creditors to obtain said property until this honorable court, in chancery sitting, shall make other order to the contrary.

Afterwards, to wit, on the twenty-first day of October, 1882, came J. H. Rice and S. W. Rawson, by their solicitors, and filed in said clerk's office their appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance of Rice et al.

Cir. Court Seventh Circuit and Northern District of Illinois.

IRA FOOTE *et al.*
ads.
THIRD NATIONAL BANK.

The clerk will please enter the appearance of the defendants J. H. Rice and S. W. Rawson by us as their solicitors in this cause.
Dated Oct. 21st, 1882.

FAIRCHILD & BLACKMAN, *Solicitors.*

To W. H. Bradley, clerk.

Endorsed: Filed Oct. 21, 1882. W. H. Bradley, cl'k.

Afterwards, to wit, on the twenty-fourth day of October, 1882, came Ira Foote and Lewis H. Bisbee, by their solicitors, and filed in said clerk's office their appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance of Foote et al.

27 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court Thereof.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.* } In Chancery.

We hereby enter the appearance of the defendants Ira Foote and Lewis H. Bisbee in the above-entitled cause.

IRA FOOTE,
LEWIS H. BISBEE,
By BISBEE, AHRENS & HAWLEY,
Their Solicitors.

Endorsed: Filed Oct. 24, 1882. W. H. Bradley, cl'k.

28 Afterwards, to wit, on the thirty-first day of October, in the adjourned October term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.* } In Chancery.

This cause having come on to be heard upon a motion of the complainant for the appointment of a receiver upon the bill of complaint and affidavits filed therein, now, therefore, in consideration thereof, it is ordered that Robert E. Jenkins, of Chicago, Illinois, be, and he is hereby, appointed receiver of all the property, real and personal, things in action, debts, equitable interests, and other effects of the defendant Ira Foote which belong to or were held in trust for him at the time of the commencement of this suit or in which he had any benefit or interest except such property as is by law exempt from execution, and also except where such trust property has in good faith been created by or the funds so held in trust have proceeded *by* some person other than the defendant Ira Foote himself, with the usual powers and duties of receiver, upon said receiver executing and filing with the clerk of this court his personal bond in the usual form to the clerk of this court in the
29 sum of five thousand dollars for the faithful performance of his duties; and it is further ordered that the defendant Ira Foote do assign, transfer, and deliver to the said receiver, on oath,

under the direction of Henry W. Bishop, master in chancery, all such property, real and personal, things in action, equitable interests, or other effects except, as aforesaid, property exempt by law from execution or trust property where the trust has been created by or trust having proceeded from some person in good faith other than the defendant himself; that he deliver to said receiver in like manner all bills, notes, mortgages, or books of account and other evidence relating thereto, and that the defendant Ira Foote execute and deliver to the said receiver, under the direction of the said master, a general assignment of all property and effects, and that the defendant appear before said master in chancery as he shall be summoned or required to do from time to time, and produce such books and papers or accounts and submit to such examination as said master shall direct in relation to any matter which he may be lawfully required to disclose.

30 Afterwards, to wit, on the first day of November, in the adjourned October term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO *vs.* IRA FOOTE *et al.* } In Chancery.

On motion of the defendants, by their solicitor, it is ordered that the injunction issued in the above-entitled cause be modified so that the defendant Ira Foote or the receiver herein be at liberty to proceed with the foreclosure suit against Couch *et al.* now pending in the circuit court of Cook county.

Afterwards, to wit, on the sixth day of November, 1882, came James Couch, Caroline E. Couch, and William H. Wood, by their solicitors, and filed in said clerk's office their appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance of James Couch et al.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois.

31 THE THIRD NATIONAL BANK OF CHICAGO *vs.* IRA FOOTE *et al.*

We hereby enter the appearance of James Couch, Caroline E. Couch, and William H. Wood in the above-entitled cause.

DUPEE & JUDAH,
Sol'rs for said Def'ts.

Endorsed: Filed Nov. 6, 1882. W. H. Bradley, cl'k.

Afterwards, to wit, on the eighth day of November, 1882, came Myron A. Decker and filed in said clerk's office his appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance of Decker.

Circuit Court of the United States, Northern District of Illinois.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.*
} Creditor's Bill.

I hereby enter my appearance in the above case for the defendant Myron A. Decker.
Dated Nov. 8th, 1882.

MYRON A. DECKER,
Sol'r in Pro. Per.

(Endorsed:) Filed Nov. 8, 1882. Wm. H. Bradley, clerk.

32 Afterwards, to wit, on the twenty-seventh day of November, in the adjourned October term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.*
} In Chancery.

On motion of the defendant Ira Foote, by Bisbee & Ahrens, his solicitors, and with the consent of Lyman & Jackson, the solicitors for the complainant, it is ordered that the defendant Ira Foote have leave to prosecute in the name of Robert E. Jenkins, heretofore appointed receiver herein, his chancery cause against James Couch *et al.*, now pending in the circuit court of Cook county, Illinois, conditioned that the application for a receiver in said cause be postponed two weeks from this date.

33 Afterwards, to wit, on the sixth day of December, 1882, came Myron A. Decker and filed in said clerk's office his answer in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of M. A. Decker.

Circuit Court United States, Northern District of Illinois.

THIRD NATIONAL BANK
vs.
IRA FOOTE, JAMES COUCH, WM. H. WOOD, MYRON A. DECKER, *et al.* } Cross-Bill.

The answer of Myron A. Decker, one of the above defendants, to the complainant's bill and amended bill herein.

This defendant, reserving to himself all right of exception to said bill and amended bill of complaint, for answer thereto says that he has been informed and believes it to be true that the said complainant did, on or about the 17th day of April, A. D. 1882, recover a judgment against said defendant, Ira Foote, in this court, for about $14,635.55, and that the same, did on or about the 15th day of July, A. D. 1882, remain in full force and effect, and that complainant, on or about that time, sued out a writ of *fieri facias* therein, directed to the United States marshal in said district, for the purposes and with the directions alleged in said bill and amended bill of complaint, and that said writ was returned wholly unsatisfied; and that said
34 marshal also made a demand upon the said Foote, on or about the 20th day of September, A. D. 1882, for the purposes alleged in said bills and with the result therein stated, and that said judgment remained in full force & virtue at the time of filing said bills, but whether said Ira Foote or any of the other defendants named in said bills combined or confederated together, contriving to injure the complainant as stated in said bills of complaint or in any other way, or for the purposes stated or for any other purpose, this defendant says he has no knowledge or information thereof, and therefore leaves complainant to make proof thereof; but this defendant expressly denies that he has in any manner or form combined or confederated with said defendant, Ira Foote, or any other defendant or person to injure or defraud the complainant or defeat or delay him in collecting his alleged judgment.

And this defendant, in answer to the several interrogatories in said bills of complaint, says that there is a certain promissory note in the possession of this defendant, bearing date January 20th, 1877, executed by James Couch, Caroline E. Couch, & Wm. H. Wood as trustees of the estate of Ira Couch, deceased, for the payment in three years from the date thereof of $15,751.66, with interest at 6 per cent., & payable to their own order and by said parties indorsed as such trustees in blank, in which said note said Ira Foote has or had a certain interest, and in which this defendant owns a
35 certain interest and is entitled to hold possession thereof by virtue of a certain contract with said Foote and by virtue of

certain liens which this defendant holds upon the interest of said Foote therein.

That on or about the 10th day of May, A. D. 1881, the said Foote sold this defendant an one-fourth of said note and the deed of trust securing the payment thereof, and assigned & delivered said note to this defendant.

That on the 20th day of May, A. D. 1881, the said note was paid down to the sum of $13,902.00 by Wm. H. Wood, acting for the parties in interest in said Couch estate, the amount paid at that time having been $5,000.00, and which, with certain payments of interest which had long before that time been made & endorsed thereon, reduced said note to the said sum of $13,902.00, as of that date, to wit, May 20, 1881.

That, upon such payment being made, said Foote & this defendant reduced the rate of interest thereon as from that date from six to five per cent. and extended the day of payment of the principal thereof five years, except that one hundred dollars monthly was provided to be paid on the principal thereafter and the interest to be paid semi-annually.

That four thousand dollars of said five thousand so paid by said Wood was paid to said Foote, & was & is applied on said Foote's three-fourths interest in said note, and one thousand of said $5,000.00 applied on this defendant's one-fourth of said note.

36 That said monthly payments have been regularly made by said estate and said Foote has received monthly, and the same has been indorsed on his interest therein, 75.00 dollars each month on the principal since May 20th, 1881, and also his three-fourths of the semi-annual payments of interest thereon; and this defendant has received monthly $25.00 & also one-fourth of the semi-annual installments of interest, which has been indorsed on this defendant's interest therein.

That this defendant is informed & believes that said Foote has also received $210.00 as of April 7th, 1882, and $385.00 as of August 1st, 1882, from said Wood, acting for said estate, to be applied on said Foote's three-fourths interest, which payments were made in advance of the requirements of said contract by said Wood to said Foote to accommodate him.

That on or about July 28, 1881, the said Foote had one other note for $5,222.22, executed by said trustees of said Couch estate, bearing date the same day and, as defendant thinks, payable at the same time & with like rate of interest, which note was in the hands of this defendant and upon which and other notes of like amount & in other matters connected therewith this defendant had, since May 20, 1881, done a large amount of work & performed a large amount of professional services, and which note was surrendered to said Foote, and the said Foote thereupon agreed that the attorney's lien which this defendant held thereon for services performed as aforesaid since May 20, 1881, should be transferred to and

37 exist against said three-fourths interest of said Foote and said note firstly described; that said services have never been

paid and are a lien at this time upon said Foote's three-fourths interest therein.

That there is now in this defendant's hands, subject to the lien aforesaid, about $86.00, which has been recently paid on said Foote's share of said note, which defendant says he is ready & prepared to account for at any time as the court may direct. Without this, that there is any other matter, cause, or thing in the complainant's said bill or amended bill of complaint contained or necessary for this defendant to make answer unto and not herein & hereby well & sufficiently answered, confessed, traversed & avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready & willing to aver, maintain, & prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MYRON A. DECKER,
Sol'r, in Pro. Personam.

STATE OF ILLINOIS, } ss:
Cook County, }

On this 4th day of Dec., A. D. 1882, before me personally appeared Myron A. Decker & made oath that he has read the above answer subscribed by him & knows the contents thereof; that the same is true of his own knowledge, except as to the — which are therein stated to be on his information & belief, & as to those matters he believes them to be true.

MYRON A. DECKER.

(Endorsed:) Filed Dec. 6th, 1882. Wm. H. Bradley, clerk.

38 Afterwards, to wit, on the twentieth day of January, 1883, came Ira Foote and Louis H. Bisbee, by their solicitors, and filed in said clerk's office their answer in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of Foote et al.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court Thereof.

THE THIRD NATIONAL BANK OF CHICAGO } In Chancery.
vs.
IRA FOOTE and LEWIS H. BISBEE *et al.* }

The joint and several answer of Ira Foote and Lewis H. Bisbee, two of the above-named defendants, to the bill of complaint as amended of the above-named complainant.

These defendants, reserving unto themselves all and all manner of benefit or advantage of exception or otherwise that can or may

be had or taken to the manifold errors, uncertainties, or imperfections in said bill of complaint as amended contained, for answer thereto, or to so much thereof as these defendants are advised it is material for them to make answer unto, answering, say:

They admit that a judgment was recovered against the said Ira Foote at or about the time in said bill of complaint set
39 forth, but whether said judgment is correctly described in said bill of complaint or whether the execution was issued thereon and returned unsatisfied, as required by law, these defendants are not at present informed, and therefore require strict proof thereof.

These defendants, further answering, say that the judgment recovered against the said defendant, Ira Foote, was recovered on two certain promissory notes for five thousand dollars (5,000) each, endorsed by said Ira Foote, which said notes the said complainant claimed to hold as collateral security for the payment of a note executed by S. G. Hooker and George D. Lincoln by the name and style of S. G. Hooker & Co., which said last-named note was also secured by other collateral security; and these defendants allege on information and belief that the said indebtedness secured by the said two five-thousand-dollar ($5,000) notes on which said judgment was recovered has been nearly, if not fully, paid out of the proceeds of said other collateral securities; and these defendants insist that in any event the said complainant is not entitled to recover any more against said Ira Foote than is legally due upon said note of said S. G. Hooker & Co.

These defendants, further answering, say that on or about the first day of November, A. D. 1882, the said Ira Foote executed, acknowledged, and delivered to Robert E. Jenkins, the receiver appointed in this cause, a deed of conveyance conveying and
40 assigning to the said Jenkins, as receiver, all of the estate, real and personal, of the said Ira Foote, including all notes, trust deeds, and property of whatsoever kind of which the said Ira Foote was then possessed or which he was then entitled to have, which said property the said Robert E. Jenkins, as receiver as aforesaid, was to hold subject to the order of this court.

These defendants, further answering, say that at the time of the making of said conveyance to said receiver the said Ira Foote was interested in a certain note in the possession of one Myron A. Decker, dated January 20th, 1877, for the sum of fifteen thousand seven hundred and fifty-one dollars ($15,751), signed by the trustees of the estate of Ira Couch, secured by a trust deed on six stores on South Water street, in Chicago, Illinois, one-fourth of which said note was and is claimed by the said Decker; but on the 18th day of September, A. D. 1882, and before the filing of the original bill in this cause, the said Ira Foote, by an assignment in writing bearing date the day and year last aforesaid, assigned to the said Lewis H. Bisbee all of the interest of said Foote in and to said note to secure the payment of an indebtedness due to Bisbee & Ahrens and to Bisbee, Ahrens & Hawley from said Foote, amounting to the sum of about twenty-five hundred dollars ($2,500), which said assign-

ment these defendants claim and insist is prior to the assignment so made by the said Ira Foote to the said Robert E. Jenkins, as receiver as aforesaid, and prior to the rights of said complainant herein.

41 These defendants, further answering, say that all of the other property of the said Ira Foote is included in a statement made by the said Ira Foote to the said receiver, and has by the said Ira Foote been assigned to the said receiver, to be held by him subject to the order of this court, as hereinbefore stated.

And now, having fully answered, these defendants pray to be hence dismissed with their costs in this behalf sustained.

IRA FOOTE.
L. H. BISBEE.

BISBEE, AHRENS & HAWLEY,
Sol'rs & of Counsel for Def'ts Ira Foote and L. H. Bisbee.

STATE OF ILLINOIS, }
Cook County, } *ss:*

Ira Foote and Lewis H. Bisbee, being duly sworn, on oath state that they have heard read the foregoing answer subscribed by them, and that the same is true to the best of their information, knowledge, and belief.

IRA FOOTE.
L. H. BISBEE.

Subscribed and sworn to before me this 19th day of January, A. D. 1883.

[SEAL.] JOHN P. AHRENS,
Notary Public.

Endorsed: Filed Jan. 20, 1883. W. H. Bradley, clerk.

42 Afterwards, to wit, on the second day of May, in the adjourned March term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.*
} In Chancery.

And now comes the complainant, by H. W. Jackson, and the defendants come, by L. H. Bisbee, and by agreement this cause is hereby referred to Henry W. Bishop, master in chancery, to take proof and report the same, with his findings thereon, to the court, and, on motion of J. H. Thompson, leave is hereby given to make J. Irving Pearce a defendant to the original bill herein, with leave also to him to file a cross-bill in this cause, but the same is not to delay the progress or hearing of the original cause.

43 Afterwards, to wit, on the fifth day of May, in the adjourned May term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.*
} In Chancery.

Upon stipulation this day filed it is ordered that this cause be referred to Henry W. Bishop, master in chancery, to take testimony and to report, among other things, the amount due from S. G. Hooker & Co. to the Third National Bank of Chicago.

44 Afterwards, to wit, on the fourth day of August, 1884, came J. Irving Pearce, by his solicitor, and filed in said clerk's office his petition in said entitled cause; which said petition is in the words and figures following, to wit:

Petition of J. Irving Pearce.

Circuit Court of the United States, Northern District of Illinois.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.*
} In Chancery.

To the honorable the judges of said court:

The petition of J. Irving Pearce, assignee of Stephen G. Hooker and George D. Lincoln, late partners under name & style of S. G. Hooker & Co., respectfully shows—

That the above-entitled suit is brought to enforce the collection of a certain judgment recovered in the circuit court of the United States for the northern district of Illinois against Ira Foote for the sum of $14,635.55 and costs of suit on the 17th day of April, 1882; that said judgment was recovered upon two promissory notes held by said bank as collateral security for a debt of S. G. Hooker & Co. to said bank.

That said notes were, with other property, assigned to this petitioner by an assignment dated Feb'y 27, 1877, and made by S. G. Hooker & Co., which assignment is still in full force and effect.

45 That the amount of said judgment largely exceeds the amount of said debt due to the said bank from said S. G. Hooker & Co., for which said notes were held as collateral security, and that the balance of said judgment, after the payment of said debt, amounting, as your petitioner believes, to about seven thousand dollars, should be collected and paid over to your petitioner.

That your petitioner is advised and believes that in order to pro-

tect his rights it is necessary that he should be made a party to said suit and permitted to file a cross-bill in said suit; wherefore your petitioner prays that an order may be entered in said cause making him a party defendant, and that he have leave to file a cross-bill in said cause, and your petitioner will ever pray, &c.

J. IRVING PEARCE, *Assignee.*

UNITED STATES OF AMERICA, }
Nor. Dist. of Illinois, } *ss:*

J. Irving Pearce, being first duly sworn, says that he has read the foregoing petition by him subscribed, and that the same is true to the best of his knowledge and belief.

J. IRVING PEARCE.

Subscribed and sworn to before me this 4th day of August, A. D. 1884.

J. H. THOMPSON,
Notary Public.

Endorsed: Filed Aug't 4, 1884. Wm. H. Bradley, clerk.

46 Afterwards, to wit, on the twenty-eighth day of November, 1884, came James H. Rice, by his solicitor, and filed in said clerk's office his appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

Circuit Court of the U. S., N. Dist. of Ills.

CHICAGO, *Nov.* 27, 1884.

THIRD NATIONAL BANK OF CHICAGO }
vs.
IRA FOOTE *et al.* }

I hereby enter the appearance of James H. Rice as defendant in the above-entitled cause and consent that the injunction heretofore issued in said cause may include his name as of the date of its issue.

W. P. BLACK,
Sol'r for J. H. Rice.

Endorsed: Filed Nov. 28, 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the twenty-eighth day of November, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

47 *Order.*

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.*
} In Chancery.

Now comes James H. Rice, defendant herein, by W. P. Black, Esq., his solicitor, and enters his appearance, and by consent, as per stipulation filed, it is ordered that said Rice be made a party defendant to the injunction heretofore entered and issued herein as of the date of its issue.

Afterwards, to wit, on the 29th day of November, 1884, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

In the United States Circuit Court, Northern District of Illinois.

THIRD NATIONAL BANK OF CHICAGO
vs.
JAMES COUCH, IRA FOOTE, *et al.*
} Creditor's Bill.

It is hereby stipulated in the above-entitled cause that Myron A. Decker, one of the defendants therein named, may transfer, assign, or set over all his interest, right, or title in and to a certain note given by the trustees of the Couch estate to the order of themselves, &
48 indorsed to Ira Foote, for the sum of fifteen thousand seven hundred and fifty-one dollars and sixty-six cents, dated January 20th, 1877, to James H. Rice, of the city of Chicago, county of Cook and State of Illinois, and may pay to said Rice on the order of said Foote any moneys in said Decker's hands claimed by said Foote, and may deliver the possession, custody, and control of said note to said Rice upon making such assignment of the interest of said Decker as aforesaid; but this stipulation is without prejudice otherwise to the injunction prayed for in the above-entitled cause or to the rights of the complainant therein, the purpose of this stipulation being simply to allow the sale and transfer by said Decker to said Rice of his, said Decker's, interest in said note and the transfer of the possession of said note by said Decker to said Rice.

It is also agreed that the bill in this case may be amended by making James H. Rice a party thereto.

Chicago, November 25th, A. D. 1884.

JAMES H. RICE.
THIRD NATIONAL BANK OF CHICAGO,
By HUNTINGTON W. JACKSON, *Its Receiver.*

Endorsed: Filed Nov. 29, 1884. Wm. H. Bradley, clerk.

49 Afterwards, to wit, on the sixteenth day of December, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.*
} In Chancery.

Upon stipulation filed it is hereby ordered that Myron A. Decker have leave to sell to James H. Rice his interest in a note given by the trustees of the Couch estate to the order of Ira Foote, dated January twentieth, 1887, for fifteen thousand seven hundred and fifty-one dollars and sixty-six cents and to transfer possession of said note to said Rice and to pay to said Rice any monies of said Foote in said Decker's hands; and it is further ordered that said Rice be made a defendant herein, and that his name be included in all processes and writs herein with the same effect as if originally inserted therein.

50 Afterwards, to wit, on the twelfth day of February, 1885, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois.

United States Circuit Court.

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.*
} Chancery.

It is hereby stipulated and agreed that J. Irving Pearce may be made a party defendant in the above-entitled cause, and that the injunction heretofore issued in said cause may include his name.

LYMAN & JACKSON,
Sol'rs for Compl't, 3rd Nat'l Bank.
JOHN H. THOMPSON,
Sol'r for J. Irving Pearce.

Endorsed: Filed Feb'y 12, 1885. Wm. H. Bradley, cl'k.

51 On the same day, to wit, on the twelfth day of February, 1885, came the complainant, by its solicitors, and filed in said clerk's office its replication to the answer of Ira Foote and Lewis H.

Bisbee in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

In the United States Circuit Court, Northern District of Illinois, January Term, A. D. 1885.

THIRD NATIONAL BANK OF CHICAGO }
vs. } In Chancery.
IRA FOOTE *et al.* }

The replication of Third National Bank of Chicago, complainant, to the joint & several answer of Ira Foote & Lewis H. Bisbee.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers of the said defendants, for replication thereunto say that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that
52 any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

LYMAN & JACKSON,
Solicitors for Complainant.

Endorsed: Filed this 12th day of February, A. D. 1885. Wm. H. Bradley, clerk.

On the same day, to wit, on the twelfth day of February, 1885, came the complainant, by its solicitors, and filed in said clerk's office its replication to the answer of Myron A. Decker in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the United States Circuit Court, Northern District of Illinois, January Term, A. D. 1885.

THIRD NATIONAL BANK OF CHICAGO *vs.* IRA FOOTE *et al.* } In Chancery.

53 The replication of Third National Bank of Chicago, complainant, to the separate answer of Myron A. Decker, one of the above defendants.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

LYMAN & JACKSON,
Solicitors for Complainant.

Endorsed: Filed this 12th day of February, A. D. 1885. Wm. H. Bradley, clerk.

54 Afterwards, to wit, on the sixteenth day of February, 1885, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THIRD NATIONAL BANK OF CHICAGO *vs.* IRA FOOTE *et al.* } In Chancery.

It is ordered that this cause be referred to E. B. Sherman, Esq., a master in chancery of this court, to report the amount due from S. G. Hooker & Co. to complainant. It is further ordered that this

reference is made in lieu of the one made May fifth, 1884, to H. W. Bishop, and that said E. B. Sherman, master, use the testimony taken before said Bishop, master, on the thirty-first day of July, 1884, and report the same, together with conclusions.

55 Afterwards, to wit, on the twenty-fifth day of February, 1885, came E. B. Sherman, one of the masters in chancery of said court, and filed in said clerk's office his report of the amount due complainant by S. G. Hooker and Co. in said entitled cause; which said report is in the words and figures following, to wit:

Master's Report.

In the Circuit Court of the United States for the Northern District of Illinois.

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.*
} In Chancery.

To the honorable judges of said court:

The undersigned, master in chancery of said court, to whom was referred the above-entitled cause by an order entered therein on the — day of ——, 1885, directing such master to report the amount due from S. G. Hooker & Company to complainant, respectfully reports that said cause was set down for hearing for the purposes in said order of reference specified on February 19, 1885; that there appeared for complainant Messrs. Lyman & Jackson, the receiver of said bank appearing in person; L. H. Bisbee, for the defendant Ira Foote; J. H. Thompson, for the defendant J. Irving Pierce, assignee of S. G. Hooker & Company, and R. E. Jenkins, receiver, in person.

That testimony was taken in said cause on such hearing,
56 which, together with that taken heretofore before Henry W. Bishop, Esq., master in chancery, is herewith returned into court and made a part hereof.

That, having considered such testimony and having heard suggestions of counsel as to the method of computation of interest and the manner of making the report pursuant to such order, the master finds:

I. That the defendant S. G. Hooker & Company was indebted to The Third National Bank of Chicago, complainant herein, for money loaned said firm and for which the defendant firm executed and delivered to complainant, on the 30th day of December, 1876, 2 notes for $13,912.97, signed by S. G. Hooker & Company. At the same time said firm of S. G. Hooker & Company delivered to said complainant certain collaterals to secure the payment of said note, among which was a note upon which a judgment was rendered against the defendant Ira Foote on April 17, 1882, to enforce the collection of which judgment the bill is filed in this cause.

I*a*. That the judgment so recovered on the 17th day of April, 1872, was for the sum of $14,635.35 and costs of suit; that the *fieri*

facias was issued on the 15th day of July, 1882, for the sum of $14,667.81; that the *fieri facias* was issued on the 15th day of July, 1882, as set forth in the creditor's bill filed herein, and that it was delivered to the marshal, who, on the 20th day of September, 1882, returned such writ with this endorsement: "By virtue of the
57 within writ he did, on the 20th of September, 1882, demand of the defendant Ira Foote payment of the amount due thereon or that he turn out property wherewith to satisfy the said writ; that the same was refused; that he therefore returned the writ by order of the attorney of the plaintiff wholly unsatisfied."

II. That it was admitted by the solicitors of the respective parties on the hearing before the master that the said S. G. Hooker & Company made an assignment of its property and effects to J. Irving Pierce on the 28th day of February, 1877, who has appeared in said cause and filed his petition setting forth such assignment and claiming that the excess of the judgment sought to be enforced in this proceeding over and above the amount due complainant by S. G. Hooker & Company ought to be paid over to him as assignee.

III. That the said J. Irving Pierce, as assignee of S. G. Hooker & Company, paid to the complainant on the 12th of May, 1879, the sum of $1,570.45, the same being a dividend declared and paid to the creditors of S. G. Hooker & Company; that such dividend was paid under protest to the receiver of complainant by the said Pierce as assignee, said assignee claiming at the time of such payment that he had no right to pay the same, because the creditors objected thereto, and that the receiver of complainant should depend upon the collaterals in his hands; that such payment was so made
58 to the receiver of complainant and by him endorsed on the said note of S. G. Hooker & Company.

IV. That the amount due upon said note of S. G. Hooker & Company to the complainant on the 24th day of February, 1885, computing the interest thereon, at the rate of 10 per cent. per annum, to the said 24th day of February, after deducting all payments and credits thereon, *there* is $7,508.74.

V. That the amount due on said note, computing the interest thereon, at the rate of 10 per cent. per annum, until April 17th, 1882, the time when the judgment was rendered by the court in favor of complainant against said Ira Foote upon the note which was collateral to said indebtedness of S. G. Hooker & Company, and at the rate of 6 per cent. per annum after April 17th, 1882, is $7,204.52.

VI. That pursuant to the request of counsel for J. Irving Pierce, assignee, the master also finds as follows: That the amount due on said note on the 24th day of February, 1885, computing the interest at the rate of 10 per cent. per annum and omitting the credit of May 12, 1878, of $1,570.45, the dividend declared by said Pierce as assignee and paid to the receiver of complainant as aforesaid under protest, is $9,655.60

VII. That the amount due on said note on the 24th day of
59 February, 1885, computing interest, at the rate of 10 per cent. per annum, up to the time of the rendition of the said judg-

ment and 6 per cent. thereafter, omitting the said credit of $1,570.45 so paid by Pierce as aforesaid, is $9,385.69.

February 24th, 1885.

Respectfully submitted.

E. B. SHERMAN,
Master in Chancery of said Court.

Endorsed: Filed the 25th day of Feb'y, 1885. Wm. H. Bradley, clerk.

60 Afterwards, to wit, on the sixteenth day of March, in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.*
} In Chancery.

On motion, leave is hereby given J. Irving Pearce, as assignee of S. G. Hooker & Co., to be made a party defendant herein and to file a cross-bill in this cause, and that said Pearce, as assignee, file his answer and cross-bill herein within ten days; also, on motion, leave is hereby given to the defendant James H. Rice to file his answer and cross-bill within ten days; but the filing of the answers and cross-bills of said Pearce and Rice shall not delay the hearing of the original bill and shall be heard with the original bill upon such testimony as is in the record at the time of such hearing.

61 On the same day, to wit, on the sixteenth day of March, 1885, came J. Irving Pearce, assignee, &c., by his solicitor, and filed in said clerk's office his cross-bill in said entitled cause; which said cross-bill is in the words and figures following, to wit:

Cross-Bill of Pearce.

Circuit Court of the United States for the Northern District of Illinois.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE, MYRON A. DECKER, JAMES H. RICE, William H. Wood, James Couch, and Caroline E. Couch (the Last Three as Trustees of Estate of Ira Couch, Deceased), Lewis H. Bisbee, S. W. Rawson, Trustee, and J. Irving Pearce, Assignee of S. G. Hooker & Co.
} In Chancery.

To the honorable the judges of said court, in chancery sitting:

J. Irving Pearce, assignee of Stephen G. Hooker and George D. Lincoln, late copartners under name and style of S. G. Hooker &

Co., one of the defendants in the above-entitled suit and a citizen of the State of Illinois, having filed his answer in said cause, brings this his cross-bill of complaint against the Third National Bank of Chicago, Ira Foote, Myron A. Decker, James H. Rice, Lewis
62 H. Bisbee, Stephen W. Rawson, trustee, and William H. Wood, Caroline E. Couch, and James Couch, the last three as trustees of the estate of Ira Couch, deceased.

And thereupon your orator complains and says that heretofore and on or about the 28th day of February, A. D. 1877, Stephen G. Hooker and George D. Lincoln, then copartners under the name, firm, and style of S. G. Hooker & Co., made and delivered to your orator as assignee a general assignment of all their property and effects for the benefit of their creditors, a copy of which assignment is hereto annexed, marked "Schedule A;" that said assignment was then accepted by your orator as assignee and remains in full force and effect, and your orator remains such assignee and is entitled to all the rights given him by such assignment; that he has paid a dividend of 30 per cent. upon the claims against said S. G. Hooker & Co., but that the balance of said claims, amounting to several thousand dollars, is still unpaid; that as such assignee he has been obliged to incur various liabilities and has paid out and expended a large sum of money for costs, fees, and expenses in litigation necessarily carried on to protect and enforce the claims belonging to said S. G. Hooker & Co. and in his hands as such assignee, and that he is entitled to a large sum as compensation for services rendered by him as such assignee.

That among the property and assets assigned to him by
63 such assignment were two promissory notes for the sum of $5,000 each, dated July 1, 1876, made by William H. Wood, Caroline E. Couch, and James Couch as trustees of the estate of Ira Couch, deceased, one payable July 1, 1877, and the other October 1, 1877, to the order of Ira Foote, and by said Ira Foote indorsed and guaranteed.

That at the time of the making of said assignment both of said notes were held by the Third National Bank of Chicago as collateral security for the indebtedness of S. G. Hooker & Co. to said bank, which indebtedness was on the 30th day of December, 1876, $13,912.97, but has since been reduced by collections from other collaterals held by said bank at that time; that on the 17th day of April, A. D. 1882, said Third National Bank of Illinois recovered a judgment in the circuit court of the United States for the northern district of Illinois for the sum of $14,635.55 and costs of suit against Ira Foote as guarantor of said two notes held by said bank as collateral security, as hereinbefore mentioned, as by reference to the records of said court will more fully appear; that said judgment has not been paid and still remains in full force and effect, and that there is now due on said judgment, including costs, the sum of $14,667.81, with interest thereon since the 17th day of April, A. D. 1882.

That your orator is entitled to the benefit and proceeds of said judgment after the indebtedness of said S. G. Hooker & Co. to

said bank and the costs of suit and the costs of this suit are paid.

64 That on or about May 12, 1879, your orator paid to Huntington W. Jackson, the receiver of said bank, the sum of $1,570.45, being a dividend of 30 per cent. upon the debt then due to said bank from said S. G. Hooker & Co.; that at the time of such payment said bank held collaterals as security for the debt of S. J. Hooker & Co. amply sufficient for the payment of said debt without resorting to your orator as such assignee; that the other creditors of said S. G. Hooker & Co. had no other fund to which they could look for payment of their claims but the property assigned to your orator; that some of said other creditors objected to the payment of said dividend to said receiver, and that your orator made said payment under protest and with the understanding that if said receiver could collect the whole debt due to said bank from said S. G. Hooker & Co. from the collaterals held by said bank said sum should be repaid to your orator, and your orator shows that said sum, with the interest thereon, should be repaid by said bank or its receiver to your orator, and that said bank should collect the amount due to it as if said payment had never been made.

And your orator charges and insists that said bank should be ordered and decreed to repay to your orator the said sum of $1,570.45 so paid to said receiver by your orator; that said bank should be ordered and decreed to collect the amount of said judgment

65 against said Ira Foote, and that after retaining the amount due to said bank from said S. G. Hooker & Co. and the costs and expenses incurred in recovering and collecting said judgment and the costs of this suit should be decreed to pay over to your orator the balance so collected, and your orator shows that after the payment to said bank of its claim there will be a large sum, amounting, as your orator believes, to about seven thousand dollars, which should be paid to your orator.

And your orator further shows that the above-entitled suit was commenced by the Third National Bank of Chicago against Ira Foote, Myron A. Decker, James H. Rice, William H. Wood, James Couch, and Caroline E. Couch, the last three as trustees of the estate of Ira Couch, deceased; Lewis H. Bisbee, and S. W. Rawson, trustee, to enforce the collection of said judgment; that answers have been filed to the bill of complaint by the defendants Myron A. Decker, Ira Foote, and Lewis H. Bisbee; that R. E. Jenkins has been appointed receiver in said cause of the property and effects of said Ira Foote; that an order has been entered in said cause referring the same to Henry W. Bishop, master in chancery, to take testimony as to the amount of the indebtedness of said S. G. Hooker & Co. to the said Third National Bank, and that replications have been filed to the answers; that an order has been entered allowing your orator to be made a party defendant in said suit, and that your orator has entered his appearance as such defendant and filed his answer

66 to the bill of complaint.

And your orator further shows that he is informed and believes that the said Myron A. Decker, James H. Rice, Lewis H.

Bisbee, Stephen W. Rawson, trustee, and William H. Wood, James Couch, and Caroline E. Couch, trustees of the estate of Ira Couch, deceased, have property and assets belonging to the said Ira Foote which ought to be applied in payment of said judgment; that said trustees of said estate of Ira Couch, deceased, are the makers of the two notes on which said judgment was recovered, and have real estate and property which ought to be sold and out of the proceeds of which said judgment ought to be paid.

And your orator well hoped that no disputes would have arisen and that the said Ira Foote would have paid to the said Third National Bank of Chicago the amount due on said judgment, and that said bank, after retaining a sufficient sum to pay the costs of this suit and the amount due to it from said S. G. Hooker & Co., would have paid over to your orator the balance due on said judgment, and that said other parties made defendants to this cross-bill would have paid over, to satisfy said judgment, the moneys in their hands which should be applied in payment of said judgment; yet the said Ira Foote refuses and neglects to pay said judgment and claims and insists that he is not bound to pay any more on said judgment than enough to satisfy the debt of said S. G. Hooker & Co. to said
67 bank, the contrary of which your orator claims and insists is true, and said bank neglects to collect said judgment and said other defendants fail and neglect to pay over towards the payment of said judgment the moneys which they ought to apply for that purpose; all of which is contrary to justice and equity.

Wherefore your orator prays that an account may be taken of the amount due from the said Ira Foote upon said judgment recovered in favor of the Third National Bank of Chicago, and the interest and costs thereon, and that after the payment of said costs and the costs of this suit and the amount found due to said Third National Bank of Chicago from said S. G. Hooker & Co. that the said Ira Foote may be decreed to pay to your orator the balance due on said judgment, and said bank may be decreed to pay to your orator said sum of $1,570.45, and that the other said defendants may be decreed to pay over to your orator any sums of money due from them to said Ira Foote, in payment of the said balance due on said judgment.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that an account may be taken and a decree made as herein prayed, may it please your honors to grant unto your orator the most gracious writ of subpœna directed to the said defendants, requiring them to answer this cross-bill, not under oath, however, their answers
68 under oath being hereby expressly waived, and that the said Ira Foote may be decreed to pay to your orator the balance of said judgment, after the payment of the amount found due to the said bank from said S. G. Hooker & Co., and the costs of suit and the costs of this suit, and that in case the said bank shall collect the whole of said judgment said bank may be decreed to pay said balance to your orator, and that your orator may have such other

said bank and the costs of suit and the costs of this suit are paid.

64 That on or about May 12, 1879, your orator paid to Huntington W. Jackson, the receiver of said bank, the sum of $1,570.45, being a dividend of 30 per cent. upon the debt then due to said bank from said S. G. Hooker & Co.; that at the time of such payment said bank held collaterals as security for the debt of S. J. Hooker & Co. amply sufficient for the payment of said debt without resorting to your orator as such assignee; that the other creditors of said S. G. Hooker & Co. had no other fund to which they could look for payment of their claims but the property assigned to your orator; that some of said other creditors objected to the payment of said dividend to said receiver, and that your orator made said payment under protest and with the understanding that if said receiver could collect the whole debt due to said bank from said S. G. Hooker & Co. from the collaterals held by said bank said sum should be repaid to your orator, and your orator shows that said sum, with the interest thereon, should be repaid by said bank or its receiver to your orator, and that said bank should collect the amount due to it as if said payment had never been made.

And your orator charges and insists that said bank should be ordered and decreed to repay to your orator the said sum of $1,570.45 so paid to said receiver by your orator; that said bank should be ordered and decreed to collect the amount of said judgment
65 against said Ira Foote, and that after retaining the amount due to said bank from said S. G. Hooker & Co. and the costs and expenses incurred in recovering and collecting said judgment and the costs of this suit should be decreed to pay over to your orator the balance so collected, and your orator shows that after the payment to said bank of its claim there will be a large sum, amounting, as your orator believes, to about seven thousand dollars, which should be paid to your orator.

And your orator further shows that the above-entitled suit was commenced by the Third National Bank of Chicago against Ira Foote, Myron A. Decker, James H. Rice, William H. Wood, James Couch, and Caroline E. Couch, the last three as trustees of the estate of Ira Couch, deceased; Lewis H. Bisbee, and S. W. Rawson, trustee, to enforce the collection of said judgment; that answers have been filed to the bill of complaint by the defendants Myron A. Decker, Ira Foote, and Lewis H. Bisbee; that R. E. Jenkins has been appointed receiver in said cause of the property and effects of said Ira Foote; that an order has been entered in said cause referring the same to Henry W. Bishop, master in chancery, to take testimony as to the amount of the indebtedness of said S. G. Hooker & Co. to the said Third National Bank, and that replications have been filed to the answers; that an order has been entered allowing your orator to be made a party defendant in said suit, and that your orator has entered his appearance as such defendant and filed his answer
66 to the bill of complaint.

And your orator further shows that he is informed and believes that the said Myron A. Decker, James H. Rice, Lewis H.

Bisbee, Stephen W. Rawson, trustee, and William H. Wood, James Couch, and Caroline E. Couch, trustees of the estate of Ira Couch, deceased, have property and assets belonging to the said Ira Foote which ought to be applied in payment of said judgment; that said trustees of said estate of Ira Couch, deceased, are the makers of the two notes on which said judgment was recovered, and have real estate and property which ought to be sold and out of the proceeds of which said judgment ought to be paid.

And your orator well hoped that no disputes would have arisen and that the said Ira Foote would have paid to the said Third National Bank of Chicago the amount due on said judgment, and that said bank, after retaining a sufficient sum to pay the costs of this suit and the amount due to it from said S. G. Hooker & Co., would have paid over to your orator the balance due on said judgment, and that said other parties made defendants to this cross-bill would have paid over, to satisfy said judgment, the moneys in their hands which should be applied in payment of said judgment; yet the said Ira Foote refuses and neglects to pay said judgment and claims and insists that he is not bound to pay any more on said judgment than enough to satisfy the debt of said S. G. Hooker & Co. to said
67 bank, the contrary of which your orator claims and insists is true, and said bank neglects to collect said judgment and said other defendants fail and neglect to pay over towards the payment of said judgment the moneys which they ought to apply for that purpose; all of which is contrary to justice and equity.

Wherefore your orator prays that an account may be taken of the amount due from the said Ira Foote upon said judgment recovered in favor of the Third National Bank of Chicago, and the interest and costs thereon, and that after the payment of said costs and the costs of this suit and the amount found due to said Third National Bank of Chicago from said S. G. Hooker & Co. that the said Ira Foote may be decreed to pay to your orator the balance due on said judgment, and said bank may be decreed to pay to your orator said sum of $1,570.45, and that the other said defendants may be decreed to pay over to your orator any sums of money due from them to said Ira Foote, in payment of the said balance due on said judgment.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that an account may be taken and a decree made as herein prayed, may it please your honors to grant unto your orator the most gracious writ of subpœna directed to the said defendants, requiring them to answer this cross-bill, not under oath, however, their answers
68 under oath being hereby expressly waived, and that the said Ira Foote may be decreed to pay to your orator the balance of said judgment, after the payment of the amount found due to the said bank from said S. G. Hooker & Co., and the costs of suit and the costs of this suit, and that in case the said bank shall collect the whole of said judgment said bank may be decreed to pay said balance to your orator, and that your orator may have such other

and further relief in the premises as the nature and equity of his case may require and to your honors shall seem meet.

J. IRVING PEARCE, *Assignee.*

JOHN H. THOMPSON,
Sol'r for Complainant in Cross-Bill.

SCHEDULE A.

This indenture, made the 28th day of February, 1877, between Stephen G. Hooker and George D. Lincoln, copartners under the name, firm, and style of S. G. Hooker & Co., of the city of Chicago, in the county of Cook and State of Illinois, parties of the first part, and J. Irving Pearce, of the same place, party of the second part:

Whereas the said copartnership is justly indebted in sundry considerable sums of money and has become unable to pay and discharge the same with punctuality or in full, and the said parties of the first are now desirous of making a fair and equitable distribution of all their property and effects among their creditors:

69 Now, therefore, this indenture witnesseth: That the said parties of the first part, in consideration of the premises and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, assigned, transferred, and set over, and by these presents do grant, bargain, and sell, release, assign, transfer, and set over, unto the said party of the second part and to his heirs and assigns forever all and singular the lands, tenements, hereditaments, and all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, and property of every name and nature whatsoever of the said parties of the first part:

To have and to hold the same and every part and parcel thereof, with the appurtenances, to the said party of the second part, his heirs, executors, administrators, and assigns.

In trust nevertheless to and for the following uses, intents, and purposes—that is to say, that the said party of the second part shall forthwith take possession of all and singular the lands, tenements, hereditaments, property, and effects hereby assigned, and sell & dispose of the same for the best price which he shall be able to obtain, and to convert the same into money; and shall also collect all and singular said debts, due bills, bonds, notes, amounts, claims, demands, and choses in action, or so much thereof as may prove collectable, and thereupon execute, acknowledge, and deliver all

70 necessary conveyances and instruments for the purpose aforesaid, and by and with the proceeds of such sales and collections the said party of the second part shall first pay and disburse all the lawful expenses, costs, charges, and commissions of executing and carrying into effect this assignment, and by & with the residue or net proceeds and avails of such sales and collections the said party of the second part shall, if the residue of such proceeds is sufficient for that purpose, pay all the copartnership debts and liabilities now due and to become due from the said parties of the first

part, and which are particularly described and mentioned in the schedule annexed marked Schedule (B), together with all interest-moneys due and to become due thereon; and if the residue of the said proceeds shall not be sufficient to pay the said debts and liabilities and interest-moneys in full, then to apply the same, so far as they will extend, to the payment of the said debts and liabilities and interest-moneys proportionately to their respective amounts.

II.

By and with the residue and remainder of said net proceeds and avails, if any there shall be, the party of the second part shall pay the same over to the said parties of the first, share and share alike.

And for the better execution of these presents and of the several trusts hereby reposed the said parties of the first part do hereby make, nominate, and appoint the said party of the second
71 part the true and lawful attorney irrevocable of them & each of them, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which can or may be necessary in the premises as full and completely as the said parties of the first part or either of them might or could do were these presents not executed, and attorneys, one or more under him, to make, nominate, and appoint, with full power of substitution or revocation, hereby ratifying and confirming all and everything that our said attorney or his attorneys shall do or cause to be done in the premises.

And the party of the second part hereby accepts the trusts created by these presents and covenants that he will faithfully perform the same.

In witness whereof the respective parties hereto have hereunto set their hands and seals the day and year first above written.

(Signed) S. G. HOOKER. [L. S.]
GEO. D. LINCOLN. [L. S.]
J. IRVING PEARCE. [L. S.]

Endorsed: Filed March 16, 1885. Wm. H. Bradley, clerk.

72 On the same day, to wit, on the sixteenth day of March, 1885, came J. Irving Pearce, assignee, &c., by his solicitor, and filed in said clerk's office his answer to the bill in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of Pearce.

In the Circuit Court of the United States for the Northern District of Illinois.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.*
} In Chancery.

The separate answer of J. Irving Pearce, assignee of S. G. Hooker & Co., to the bill of complaint in the above-entitled cause.

This respondent, reserving all right of exception to said bill, for answer thereto says that he admits that said complainant recovered a judgment against the said Ira Foote, as alleged in said bill, and that an execution was issued on said judgment and returned as alleged, and that said judgment remains in full force and effect, and that there is now due on said judgment the said sum of $14,667.81 and interest thereon since the 17th day of April, A. D. 1882, but this defendant says that said judgment was recovered upon two certain promissory notes, which were held by the said complainant as collateral security for the indebtedness of S. G. Hooker & Co.
73 to the said complainant; that this defendant became entitled to said notes and said judgment after the said complainant shall be paid the said indebtedness by an assignment made to him by said S. G. Hooker & Co., dated the 27th day of February, A. D. 1877, and this defendant claims the benefit of said judgment after said indebtedness to said complainant shall be paid.

And this respondent, further answering, says that he has no knowledge as to the assets or property of said Ira Foote, except as set forth in said bill of complaint and the amendment thereto, but believes the allegations in said bill and said amendment to be true.

All which this respondent is ready to aver, maintain, and prove.

J. IRVING PEARCE, *Assignee.*

Endorsed: Filed March 16, 1885. Wm. H. Bradley, clerk.

74 Afterwards, to wit, on the twenty-third day of March, 1885, came James H. Rice, by his solicitors, and filed in said clerk's office his answer to the bill in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of Rice.

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the United States Circuit Court for the Northern District of Illinois, of the May Term, A. D. 1885.

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE, MYRON A. DECKER, JAMES H. RICE, WILLIAM H. Wood, James Couch, and Caroline E. Couch, the Last Three as Trustees of the Estate of Ira Couch, Deceased; Lewis H. Bisbee, S. W. Rawson, as Trustee, and J. Irving Pearce, as Assignee of S. G. Hooker and Company.

The answer of James H. Rice to the bill of complaint of The Third National Bank of Chicago *vs.* Ira Foote *et al.*

This defendant, reserving unto himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the manifold errors, uncertainties, or imperfections in said bill of complaint as amended, for answer thereto or
75 to so much thereof as this defendant is advised it is material for him to answer, says—

That he admits that a judgment was recovered by said Third National Bank against said Ira Foote at the time and for the amount stated in said bill of complaint, and he admits that a *fieri facias* was issued thereon and returned unsatisfied, as stated in said bill of complaint.

Further answering, this defendant denies that he has any money, property, or thing of value whatever in his hands or under his control or in his possession belonging to said Ira Foote.

Further answering said bill of complaint, this defendant, upon information and belief, states the facts to be, with reference to the judgment mentioned in said bill of complaint, as follows, and not otherwise: During the years 1874, 1875, and a portion of the year 1876 Stephen G. Hooker and George B. Lincoln were copartners under the firm name of S. G. Hooker & Company, doing what was supposed to be a grain commission business upon the Chicago Board of Trade; that said Ira Foote was a carpenter and builder during said period of time, and nearly all his lifetime had been a contractor and builder by profession, and was without experience in speculating and dealing in options on the Chicago Board of Trade or elsewhere; that some time during the year 1875, in a conversation between said Hooker and said Foote, said Hooker invited said Foote to speculate upon the Chicago Board of Trade through the firm of S. G. Hooker & Company as commission merchants;
76 said Foote in such conversation informed Mr. Hooker that he (said Foote) did not want to buy or sell any articles that would be delivered at any time, and only desired to speculate in differ-

ences; whereupon said Hooker replied that his said firm would speculate for said Foote on said board of trade in differences; that it was not necessary to receive or deliver any article purchased or sold upon the Chicago Board of Trade, but his house as commission merchants would take orders from Mr. Foote to sell articles for a future month and settle upon the basis of the difference in price before the maturity of any contract or before the day of delivery should arrive; and said Foote then requested said Hooker to buy and sell grain and provisions on the Chicago Board of Trade and in all cases to settle the loss or profit upon any trade by paying or receiving the difference between the price for which said article was purchased or sold at the market value of such article at the time such settlement was made; that under no circumstances was any contract for the purchase and sale of any article to remain until it matured, and no deliveries were to be made of any article bought or sold, and no cash article was to be dealt in, and said Hooker, acting for the firm of S. G. Hooker & Company, accepted the business of said Foote upon the understanding as aforesaid, and by virtue of this agreement and no other said firm of S. G. Hooker & Company made or pre-

77 tended to make a large number of trades upon the Chicago Board of Trade for the account of said Ira Foote; that said Ira Foote gave no orders to said S.G. Hooker & Company as to what should be purchased or sold, neither were any reports made to him from time to time of any purchases and sales made, and whatever trades were made by S. G. Hooker & Company (if any were made) were made with the express understanding and agreement that no delivery should be made and that they should settle up the loss or profit solely upon the basis of the difference in value as aforesaid; that in the month of May, 1876, the firm of S. G. Hooker & Company rendered a statement to said Ira Foote showing a loss to said Foote by virtue of the trades made, as hereinbefore fully stated, amounting to twenty thousand nine hundred forty-three dollars and forty-six cents ($20,943.46).

This defendant, further answering, says that said Ira Foote was the owner of four notes of five thousand dollars each, made by the trustees of the estate of Ira Couch, deceased, dated July 1st, 1876, and payable respectively in three, six, nine, and twelve months from their date to the order of said Ira Foote, and that within a very short time after said first day of July, 1876, the said Ira Foote guaranteed said four notes upon their backs and passed the same over to said S. G. Hooker & Company in payment of twenty thousand dollars of said account so rendered by said S. G. Hooker & Company against said Foote, and the balance of said account was paid by said Ira Foote in cash.

78 This defendant, further answering, says that some time in the month of December, 1876, two of the said four notes of five thousand dollars each were transferred by said S. G. Hooker & Company to the said Third National Bank of Chicago, together with other collaterals, to secure an indebtedness which the said firm of S. G. Hooker & Company then owed said Third National Bank, amounting to about the sum of thirteen thousand dollars ($13,000). Where-

upon the said Third National Bank commenced its suit in this court against said Ira Foote based upon the said Foote's guaranty upon the back of said two notes, and such proceedings were had thereunder that on the 17 day of April, 1882, the judgment described in the bill of complaint was rendered.

This defendant, further answering, states that after the transfer of said two notes to said Third National Bank, to wit, on the — day of February, 1876, the said firm of S. G. Hooker & Company made or pretended to make a voluntary assignment of all their assets to one J. Irving Pearce for the benefit of the creditors of the said S. G. Hooker & Company, and that afterwards the said Ira Foote, for a valuable consideration, transferred and assigned to this defendant all and singular his interest in the said four notes of five thousand dollars each so turned over by said Foote to said S. G. Hooker & Company.

Further answering, this defendant says that at the time the
79 judgment mentioned in the original bill of complaint was rendered there was due to said Third National Bank from S. G. Hooker & Company —, for which debt said two notes were held by said bank as collateral security for the sum of about six thousand dollars ($6,000); that on the 25th day of February, 1885, there was due from said S. G. Hooker & Company, including interest at the rate of ten per cent., the sum of seven thousand five hundred eight dollars and seventy-four cents ($7,508.74), and including interest at six per cent. since the date of the rendition of said judgment mentioned in said original bill of complaint there was due to said Third National Bank from said S. G. Hooker & Company the sum of seven thousand two hundred four dollars and fifty-two cents ($7,204.52).

Further answering, this defendant says that the entire sum of twenty thousand nine hundred forty-three dollars and forty-six cents ($20,943.46) included in the statement rendered by said firm of S. G. Hooker & Company to said Ira Foote in the month of May, 1876, was, as this defendant believes and charges, fictitious; that in point of fact no trades had been made and no sum of money whatever was due from said Ira Foote to said S. G. Hooker & Company; and this defendant properly avers and charges that if any trades were made by S. G. Hooker & Company for the account of Ira Foote they were made in plain violation of section 130 of the Criminal Code of the State of Illinois, and were in their inception
80 gambling contracts and were therefore void.

This defendant therefore charges that in any event there was in law no sum of money whatever due from Ira Foote to S. G. Hooker & Company, and that the guaranty of said notes by said Foote and the passage of said four notes of five thousand dollars each from said Ira Foote to said S. G. Hooker & Company in July, 1876, was wholly without consideration, and that no title to said notes, in law or equity, passed from said Foote to said S. G. Hooker & Company.

This defendant therefore says that he, as the *bona fide* purchaser of said two notes from said Ira Foote, is entitled, by virtue of the statutes of the State of Illinois, to have such judgment vacated and

set aside, for the reason that it was based wholly upon a gambling and void contract.

And now, having fully answered all the allegations in said bill of complaint contained, this defendant prays that said bill may be dismissed, and that he may recover his costs in such cases made and provided.

JAMES H. RICE.

BISBEE, AHRENS & DECKER,
Sol'rs and of Counsel.

Endorsed: Filed M'ch 23, 1885. Wm. H. Bradley, clerk.

81 On the same day, to wit, on the twenty-third day of March, 1885, came James H. Rice, by his solicitors, and filed in said clerk's office his answer to the cross-bill of J. Irving Pearce in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of Rice to Cross-Bill.

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the United States Circuit Court for the Northern District of Illinois, of the May Term, A. D. 1885.

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE, MYRON A. DECKER, JAMES H. RICE, WILLIAM H. Wood, James Couch, and Caroline E. Couch, the Last Three as Trustees of the Estate of Ira Couch, Deceased; Lewis H. Bisbee, S. W. Rawson, as Trustee, and J. Irving Pearce, as Assignee of S. G. Hooker and Company.

The answer of James H. Rice to the cross-bill of J. Irving Pearce, assignee of S. G. Hooker & Company, answering, says—

That he denies that the firm of S. G. Hooker & Company ever made any legal assignment of all their property and effects to said J. Irving Pearce, and he denies that there are any creditors
82 of S. G. Hooker & Company, except the Third National Bank, who have any claim, legal or equitable, against said S. G. Hooker & Company.

Further answering, this defendant denies that said J. Irving Pearce has been obliged to incur various liabilities, or that he has paid out and expended a large sum of money for costs, fees, and expenses in litigation, necessarily carried on to protect and enforce the claims belonging to said S. G. Hooker & Company.

And he further denies that said J. Irving Pearce is entitled to any large sum as compensation, or any sum whatever, for services rendered by said Pearce as assignee.

Further answering, this defendant denies that among the property and assets assigned to said J. Irving Pearce there were two

promissory notes for the sum of five thousand dollars each, dated July 1st, 1876, made by William H. Wood, Caroline E. Couch, and James Couch, as trustees of the estate of Ira Couch, deceased, one payable July 1st, 1877, and the other October 1st, 1877, to the order of Ira Foote, and by said Ira Foote endorsed and guaranteed, except as is hereinafter stated.

Further answering, this defendant admits that the Third National Bank of Chicago held as collateral security two notes, of the description hereinabove just given, for the indebtedness of S. G. Hooker & Company to said bank, and which indebtedness was, on the 30th day of December, 1876, about thirteen thousand nine hundred and twelve dollars and ninety-seven cents ($13,912.97), but has
83 since been reduced by collection from other collaterals held by said bank at that time to about the sum of seventy-five hundred dollars ($7,500).

Further answering, this defendant admits that on the 17th day of April, 1882, said Third National Bank recovered a judgment in this court of the face amount of fourteen thousand six hundred thirty-five dollars and fifty-five cents ($14,635.55) and costs against said Ira Foote as guarantor of said two notes held by said bank as collateral security.

Further answering, this defendant denies that said J. Irving Pearce, as assignee or otherwise, is entitled to the benefit and proceeds of said judgment after the indebtedness of said S. G. Hooker & Company to said bank has been paid.

Further answering said cross-bill, this defendant admits that on the 12th day of May, 1879, said J. Irving Pearce paid to Huntington W. Jackson, the receiver of said Third National Bank, the sum of one thousand five hundred seventy dollars and forty-five cents ($1,570.45) as a dividend to it upon the claim which said Third National Bank held against said S. G. Hooker & Company, and which sum was duly endorsed upon said note, of date December 30th, 1876, for thirteen thousand nine hundred twelve dollars and ninety-seven cents ($13,912.97) as aforesaid; but this defendant denies that at the time of such payment of said dividend the said Third National Bank held other collaterals as security for the debt of S. G. Hooker & Company, excepting the two notes of five
84 thousand dollars each, dated July 1st, 1876, hereinbefore described.

Further answering, this defendant denies that there were any other creditors of said S. G. Hooker & Company excepting said Third National Bank, and denies that said other creditors objected to the payment of said dividend to said receiver, and further denies that said J. Irving Pearce made said payment under protest and with the understanding that if said receiver could collect the whole debt due to said bank from said S. G. Hooker & Company from the collaterals held by said bank said sum should be repaid to said J. Irving Pearce; and this defendant denies that said sum should under any circumstances be repaid to said J. Irving Pearce, or that said bank should collect the amount due to it as if said payment had never been made; and this defendant avers the fact to be that

said payment was voluntarily made by said J. Irving Pearce to said Third National Bank and cannot in law or equity be recovered back. This defendant denies that said Third National Bank should be ordered to collect the full amount of its said judgment against said Ira Foote, and after retaining the amount due to said bank the balance of said judgment to be paid to said J. Irving Pearce; and in this behalf defendant further says that said payment by said Pearce was made more than five years before the filing of his cross-bill herein, and that no action can now be maintained, either in
85 law or equity, for the recovery thereof, such action being barred by the statute of limitations of the State of Illinois.

Further answering, this defendant denies that he has any property in his hands or under his control which ought to be applied in payment of said judgment against said Ira Foote; and this defendant avers the fact to be that the judgment set out and described in the original bill of complaint is absolutely void; that the contract upon which the same was based was a gaming contract, the details of which are set out in the cross-bill of this defendant filed herein and the answer filed by this defendant to the original bill of complaint in this cause; that neither said J. Irving Pearce nor said Third National Bank are entitled to take anything by virtue of said judgment.

And now, having fully answered said bill, this defendant prays that said cross-bill may be dismissed, and that this defendant may recover his costs therein.

JAMES H. RICE.

BISBEE, AHRENS & DECKER,
Sol'rs and of Counsel.

Endorsed: Filed M'ch 23, 1885. Wm. H. Bradley, clerk.

86 On the same day, to wit, on the twenty-third day of March, 1885, came James H. Rice, by his solicitors, and filed in said clerk's office his cross-bill in said entitled cause; which said cross-bill is in the words and figures following, to wit:

Cross-Bill of Rice.

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the United States Circuit Court for the Northern District of Illinois, of the May Term, A. D. 1885.

THIRD NATIONAL BANK OF CHICAGO }
vs. }
IRA FOOTE, MYRON A. DECKER, JAMES H. RICE, WILLIAM H. Wood, James Couch, and Caroline E. Couth, the Last Three as Trustees of the Estate of Ira Couch, Deceased; Lewis H. Bisbee, S. W. Rawson, as Trustee, and J. Irving Pearce, as Assignee of S. G. Hooker and Company. }

To the honorable judges of said court, in chancery sitting:

James H. Rice, one of the defendants in the above-entitled suit

and a citizen of the State of Illinois, having filed his answer in said cause, brings this his cross-bill of complaint against the Third National Bank of Chicago, J. Irving Pearce, assignee of S. G.
87 Hooker & Company; Ira Foote, Myron A. Decker, Lewis H. Bisbee, Stephen W. Rawson, trustee, and William H. Wood, Caroline E. Couch, and James Couch, the last three as trustees of the estate of Ira Couch, deceased.

And thereupon your orator complains and says that on the 21st day of September, 1882, the Third National Bank of Chicago filed its bill of complaint in this court, on the chancery side thereof, against said Ira Foote, Myron A. Decker, James H. Rice, William H. Wood, James Couch, and Caroline E. Couch, the last three as trustees of the estate of Ira Couch, deceased; Lewis H. Bisbee, Stephen W. Rawson, trustee, and on the 16th day of March, A. D. 1885, the said J. Irving Pearce, trustee, was made a party defendant in said bill of complaint; that in said original bill of complaint the said Third National Bank alleged that on the 17th day of April, 1882, it recovered a judgment against Ira Foote in this court for the sum of fourteen thousand six hundred thirty-five dollars and fifty-five cents ($14,635.55) and its cost of suit, which said judgment then remained in full force and effect and unsatisfied; that on the 15th day of July, 1882, it prosecuted out of said court a writ of *fieri facias* upon said judgment and for the amount named therein, which was duly delivered to the marshal for the northern district of Illinois for collection, and that on the 20th day of September, 1882, said *fieri facias* was duly returned by said United States marshal wholly unsatisfied; and it is further charged in said bill of complaint that the other defendants named therein had
88 property of some kind which ought to be turned over for the payment of said judgment, and required all of said defendants to answer fully, stating what, if any, property they or either of them had in their hands which ought in equity to be transferred and assigned for the purpose of paying said judgment.

Your orator further states that on the 20th day of January, 1883, the said Ira Foote filed his answer in said cause, wherein he admitted the recovery of the judgment, as stated in said original bill, and averred that said judgment was recovered against him on his guaranty of two certain promissory notes of five thousand dollars each; which said notes the said Third National Bank held as collateral security for the payment of a note executed by S. G. Hooker and George D. Lincoln, copartners under the name and style of S. G. Hooker and Company, which said last-named note was secured by other collateral security, and said Foote further averred that said original note held by said Third National Bank had been nearly paid by endorsements thereon growing out — or arising from the proceeds of said other collaterals.

Thereupon your orator, having obtained the leave of the court for that purpose, shows and charges that during the years 1874 and 1875 and a portion of the year 1876 Stephen G. Hooker and George D. Lincoln were copartners under the firm name of S. G. Hooker &

said payment was voluntarily made by said J. Irving Pearce to said Third National Bank and cannot in law or equity be recovered back. This defendant denies that said Third National Bank should be ordered to collect the full amount of its said judgment against said Ira Foote, and after retaining the amount due to said bank the balance of said judgment to be paid to said J. Irving Pearce; and in this behalf defendant further says that said payment by said Pearce was made more than five years before the filing of his cross-bill herein, and that no action can now be maintained, either in
85 law or equity, for the recovery thereof, such action being barred by the statute of limitations of the State of Illinois.

Further answering, this defendant denies that he has any property in his hands or under his control which ought to be applied in payment of said judgment against said Ira Foote; and this defendant avers the fact to be that the judgment set out and described in the original bill of complaint is absolutely void; that the contract upon which the same was based was a gaming contract, the details of which are set out in the cross-bill of this defendant filed herein and the answer filed by this defendant to the original bill of complaint in this cause; that neither said J. Irving Pearce nor said Third National Bank are entitled to take anything by virtue of said judgment.

And now, having fully answered said bill, this defendant prays that said cross-bill may be dismissed, and that this defendant may recover his costs therein.

JAMES H. RICE.

BISBEE, AHRENS & DECKER,
Sol'rs and of Counsel.

Endorsed: Filed M'ch 23, 1885. Wm. H. Bradley, clerk.

86 On the same day, to wit, on the twenty-third day of March, 1885, came James H. Rice, by his solicitors, and filed in said clerk's office his cross-bill in said entitled cause; which said cross-bill is in the words and figures following, to wit:

Cross-Bill of Rice.

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the United States Circuit Court for the Northern District of Illinois, of the May Term, A. D. 1885.

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE, MYRON A. DECKER, JAMES H. RICE, WILLIAM H. Wood, James Couch, and Caroline E. Couth, the Last Three as Trustees of the Estate of Ira Couch, Deceased; Lewis H. Bisbee, S. W. Rawson, as Trustee, and J. Irving Pearce, as Assignee of S. G. Hooker and Company.

To the honorable judges of said court, in chancery sitting:

James H. Rice, one of the defendants in the above-entitled suit

and a citizen of the State of Illinois, having filed his answer in said cause, brings this his cross-bill of complaint against the Third National Bank of Chicago, J. Irving Pearce, assignee of S. G.
87 Hooker & Company; Ira Foote, Myron A. Decker, Lewis H. Bisbee, Stephen W. Rawson, trustee, and William H. Wood, Caroline E. Couch, and James Couch, the last three as trustees of the estate of Ira Couch, deceased.

And thereupon your orator complains and says that on the 21st day of September, 1882, the Third National Bank of Chicago filed its bill of complaint in this court, on the chancery side thereof, against said Ira Foote, Myron A. Decker, James H. Rice, William H. Wood, James Couch, and Caroline E. Couch, the last three as trustees of the estate of Ira Couch, deceased; Lewis H. Bisbee, Stephen W. Rawson, trustee, and on the 16th day of March, A. D. 1885, the said J. Irving Pearce, trustee, was made a party defendant in said bill of complaint; that in said original bill of complaint the said Third National Bank alleged that on the 17th day of April, 1882, it recovered a judgment against Ira Foote in this court for the sum of fourteen thousand six hundred thirty-five dollars and fifty-five cents ($14,635.55) and its cost of suit, which said judgment then remained in full force and effect and unsatisfied; that on the 15th day of July, 1882, it prosecuted out of said court a writ of *fieri facias* upon said judgment and for the amount named therein, which was duly delivered to the marshal for the northern district of Illinois for collection, and that on the 20th day of September, 1882, said *fieri facias* was duly returned by said United States marshal wholly unsatisfied; and it is further charged in said bill of complaint that the other defendants named therein had
88 property of some kind which ought to be turned over for the payment of said judgment, and required all of said defendants to answer fully, stating what, if any, property they or either of them had in their hands which ought in equity to be transferred and assigned for the purpose of paying said judgment.

Your orator further states that on the 20th day of January, 1883, the said Ira Foote filed his answer in said cause, wherein he admitted the recovery of the judgment, as stated in said original bill, and averred that said judgment was recovered against him on his guaranty of two certain promissory notes of five thousand dollars each; which said notes the said Third National Bank held as collateral security for the payment of a note executed by S. G. Hooker and George D. Lincoln, copartners under the name and style of S. G. Hooker and Company, which said last-named note was secured by other collateral security, and said Foote further averred that said original note held by said Third National Bank had been nearly paid by endorsements thereon growing out — or arising from the proceeds of said other collaterals.

Thereupon your orator, having obtained the leave of the court for that purpose, shows and charges that during the years 1874 and 1875 and a portion of the year 1876 Stephen G. Hooker and George D. Lincoln were copartners under the firm name of S. G. Hooker &

Company as grain commission merchants, doing business on
89 the Chicago Board of Trade; that said Ira Foote then was and for more than twenty years prior thereto had been a contractor and builder by profession in said city of Chicago; that some time during the year 1875 an agreement was entered into by and between said Ira Foote and said S. G. Hooker & Company by which said S. G. Hooker & Company were to deal in differences for said Foote by purporting to buy grain and provisions upon the Chicago Board of Trade for the account and risk of said Ira Foote, and all such purchases and sales so made by said S. G. Hooker & Company were by the terms of the contract to be executed in some month in the future, and in no event were any purchases or sales thus to be made to remain open until the day of delivery, but were in all cases to be settled prior to the maturity of such contracts by the payment by said S. G. Hooker & Company of the difference in the price of the article thus purchased or sold, based upon the market price upon the Chicago Board of Trade; that there was to be no delivery of any article thus to be purchased or sold by said S. G. Hooker & Company for said Ira Foote, and no cash or spot grain or provision whatever was to be dealt in.

Pursuant to this agreement the said firm of S. G. Hooker and Company undertook to and claimed they did buy and sell for the account of said Foote, on the Chicago Board of Trade, between November, 1874, and June, 1876, a large amount of corn, wheat, pork, and lard, and likewise claimed that they paid out the losses arising in such transactions by paying the difference or receiving
90 the difference just in accordance with the contract originally made between said Hooker & Company and said Foote; and that in the month of June, 1876, said S. G. Hooker & Company rendered an account of such purchases and sales to said Foote, showing an indebtedness of said Foote to said Hooker & Company of about the sum of twenty-two thousand dollars ($22,000); and thereupon, in order to settle the said differences in said account, the said Ira Foote passed over to said S G. Hooker & Company four notes of five thousand dollars each, dated July 1st, 1876, and signed by the trustees of the estate of Ira Couch, deceased, payable to the order of said Ira Foote, in three, six, nine, and twelve months from date of payment, all of which notes were guaranteed upon the back by said Ira Foote, and the balance of said account was paid by said Foote in cash.

Your orator further states that in December, 1876, two of said four notes for five thousand dollars each, with other collaterals, were placed in the Third National Bank of Chicago as collateral security for an indebtedness of about thirteen thousand dollars ($13,000), due said bank from said S. G. Hooker & Company; that soon thereafter the said firm of S. G. Hooker & Company made a voluntary assignment to one J. Irving Pearce for the benefit of their creditors.

Your orator further states that said Ira Foote transferred and assigned all his interest for a valuable consideration in said two five-

thousand-dollar notes to the complainant, and that your
91 orator is now a *bona fide* owner of the two notes thus transferred to the said Third National Bank; that the judgment described in the original bill of complaint in this cause was based wholly and solely upon the guaranty of said Ira Foote upon the two notes of five thousand dollars each thus placed as collateral security in said Third National Bank.

Your orator further states that the original transaction between said S. G. Hooker & Company and said Ira Foote was a mere wager or bet on the price of grain and provisions and constituted an option contract prohibited by section 130 of chapter 38 of the General Statutes of the States of Illinois, which reads as follows: "Gambling in grain, etc.: Whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold, or forestalls the market by spreading false rumors to influence the price of commodities therein, or corners the market or attempts to do so in relation to any of such commodities, shall be fined not less than ten dollars nor more than one thousand dollars, or confined in the county jail not exceeding one year, or both; and all contracts made in violation of this section shall be considered gambling contracts and shall be void."

And therefore the consideration of said Ira Foote's guaranty upon said two notes failed, and no title whatever to said two notes passed
from said Ira Foote to said S. G. Hooker & Company, and
92 that the sale and transfer of said two notes to your orator vested the title of said two notes absolutely in the complainant.

Your orator further states, at the time the original suit (in which the judgment was rendered as set forth in the original bill of complaint) in this case was commenced there was only due from said S. G. Hooker & Company to the said Third National Bank the sum of about six thousand dollars ($6,000), and that on the 25th day of February, 1885, there was only due said Third National Bank from said S. G. Hooker & Company, including interest at ten per cent., the sum of seven thousand five hundred and eight dollars and seventy-four cents ($7,508.74), and at six per cent. only the sum of seven thousand two hundred and four dollars and fifty-two cents ($7,204.52).

Your orator further states and charges that by virtue of section 136, chapter 38, of the Revised Statutes of the State of Illinois no assignment of any bill, note, bond, covenant, agreement, judgment, mortgage, or other security or conveyance of any property shall in any manner affect the defense of the person giving, granting, drawing, entering into, or executing the same, or the remedies of any person interested therein.

And therefore your orator charges that inasmuch as said original transaction between said Ira Foote and said S. G. Hooker & Company was a gaming contract and absolutely void by reason thereof, the said Third National Bank could not claim said notes as in-ocent purchasers thereof.

93 And your orator further charges that by virtue of section 135 of said chapter 38 of the Revised Statutes of the State of Illinois all judgments granted upon any gaming contract may be set aside and vacated by any court of equity upon bill filed for that purpose.

And your orator charges that said judgment described in said original bill of complaint was based wholly upon a gaming contract and ought in equity to be vacated and set aside.

Wherefore your orator prays that the Third National Bank of Chicago, Ira Foote, William H. Wood, James Couch, and Caroline E. Couch, the last three as trustees of the estate of Ira Couch, deceased, and J. Irving Pearce, as assignee of said S. G. Hooker & Company, may be made parties defendant to this bill and required to answer the same, but not under oath, their oaths in that regard being hereby waived, and that your orator may have the following relief, to wit:

I. That the judgment rendered by this court on the 17th day of April, 1872, in favor of said Third National Bank of Chicago, against said Ira Foote for fourteen thousand six hundred thirty-five dollars and fifty-five cents ($14,635.55) may be vacated, annulled, and set aside.

II. That if for any reason the court shall not grant the above prayer the said judgment shall be vacated, annulled, and set aside upon the payment by your orator to said Third National Bank of such sum or sums of money as may be due to said bank
94 from said S. G. Hooker & Company, your orator hereby offering to pay, as he has heretofore offered to pay, the amount due said bank from said S. G. Hooker & Co. upon surrender to him of said notes.

III. That said Third National Bank be ordered and decreed to return said two notes of five thousand dollars each, dated July 1st, 1876, signed by the trustees of the estate of said Ira Couch, deceased, to your orator, and for such other and further relief as equity may require, and that your orator may have summons directed to said defendants, as provided by law.

JAMES H. RICE.

BISBEE, AHRENS & DECKER,
Sol'rs and of Counsel.

Endorsed: Filed M'ch 23, 1885. Wm. H. Bradley, clerk.

95 Afterwards, to wit, on the twenty-seventh day of May, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.* } In Chancery.

Now come the parties, by their solicitors, and on motion of L. H.

Bisbee, Esq., leave is granted to James H. Rice to amend his answer to the original bill herein and to amend his cross-bill; and it is ordered that said Third National Bank and J. Irving Pearce answer said cross-bill as amended within ten days, and that when this cause is at issue on said cross-bill the same be referred to E. B. Sherman, master in chancery, to take testimony, and report the same with his findings to the court.

96 On the same day, to wit, on the twenty-seventh day of May, 1885, came James H. Rice, by his solicitors, and filed in said clerk's office his amended answer in said entitled cause; which said amended answer is in the words and figures following, to wit:

Amended Answer of Rice.

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the United States Circuit Court for the Northern District of Illinois.

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE, MYRON A. DECKER, JAMES H. RICE, WILLIAM H. Wood, James Couch, and Caroline E. Couch, the Last Three as Trustees of the Estate of Ira Couch, Deceased; Lewis H. Bisbee, S. W. Rawson, as Trustee, and J. Irving Pearce, as Assignee of S. G. Hooker and Company.

By leave of the court first had and obtained, the defendant James H. Rice amends his answer filed in this cause on the 23rd day of March, A. D. 1885, by inserting after the words "thirteen thousand dollars," in the twelfth (12th) line on the fourth (4th) page of said answer, the following:

97 And this defendant avers that at the time said Third National Bank received said two notes it had full knowledge of the nature and character of the indebtedness from said Ira Foote to said S. G. Hooker & Company and knew that said notes were handed to said S. G. Hooker & Company, with the guaranty of said Ira Foote thereon, in payment of an illegal and gambling debt from said Foote to said S. G. Hooker & Company, and that said Third National Bank from that time to the present has held said notes under the same condition and subject to like advances as said S. G. Hooker & Company would have held them.

JAMES H. RICE,
By BISBEE, AHRENS & DECKER, *Solicitors.*

Endorsed: Filed May 27, 1885. Wm. H. Bradley, clerk.

98 On the same day, to wit, on the twenty-seventh day of May, 1885, came Ira Foote, by his solicitors, and filed in said clerk's office his amended answer in said entitled cause; which said amended answer is in the words and figures following, to wit:

Amended Answer of Foote.

UNITED STATES OF AMERICA,
Northern District of Illinois.

In the United States Circuit Court for the Northern District of Illinois.

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE, MYRON A. DECKER, JAMES H. RICE, WILLIAM H. Wood, James Couch, and Caroline E. Couch, the Last Three as Trustees of the Estate of Ira Couch, Deceased; Lewis H. Bisbee, S. W. Rawson, as Trustee, and J. Irving Pearce, as Assignee of S. G. Hooker and Company.

By leave of the court first had and obtained for that purpose, the defendant Ira Foote, in the further answering of the original bill of complaint in this cause, hereby adopts as his own all the allegations in the answer of James H. Rice, filed the 23rd
99 day of March, A. D. 1885, and also to the cross-bill of J. Irving Pearce filed in this cause. This defendant adopts the answer of James H. Rice to said cross-bill, filed on the 23rd day of March, 1885, as his own and prays that the said answer of James H. Rice to the original bill and the answer of James H. Rice to the cross-bill of J. Irving Pearce may be accepted and adopted by this defendant as his answer thereto.

IRA FOOTE,
By BISBEE, AHRENS & DECKER, *Solicitors.*

Endorsed: Filed May 27, 1885. Wm. H. Bradley, clerk.

On the same day, to wit, on the twenty-seventh day of May, 1885, came James H. Rice, by his solicitors, and filed in said clerk's office his amended cross-bill in said entitled cause; which said amended cross-bill is in the words and figures following, to wit:

Amended Cross-Bill.

UNITED STATES OF AMERICA,
Northern District of Illinois.

In the United States Circuit Court for the Northern District of Illinois.

THIRD NATIONAL BANK OF CHICAGO
vs.
100 IRA FOOTE, MYRON A. DECKER, JAMES H. RICE, WILLIAM H. Wood, James Couch, and Caroline E. Couch, the Last Three as Trustees of the Estate of Ira Couch, Deceased; Lewis H. Bisbee, S. W. Rawson, as Trustee, and J. Irving Pearce, as Assignee of S. G. Hooker and Company.

James H. Rice, the complainant in his cross-bill filed on the 23rd

day of March, 1885, in this cause, by leave of the court amends said cross-bill by inserting after the words "S. G. Hooker & Company," in the third line from the bottom of page four of said cross-bill, the following, to wit: And the said Third National Bank received said two notes of five thousand dollars ($5,000.00) each from the firm of S. G. Hooker & Company with full knowledge that the same were turned over to said S. G. Hooker & Co., with the guaranty of Ira Foote thereon, in settlement of an illegal and gambling debt claimed by said S. G. Hooker & Co. to be due them from Ira Foote, and your orator avers that said Third National Bank from that time to the present has held said notes, well knowing the same were wrongfully turned over to said S. G. Hooker & Co. and liable to the same advances in the hands of said bank as they would have been in the hands of said S. G. Hooker & Co.

JAMES H. RICE,
By BISBEE, AHRENS & DECKER, *Solicitors.*

Endorsed: Filed May 27, 1885. Wm. H. Bradley, clerk.

101 On the same day, to wit, on the twenty-seventh day of May, 1885, came J. Irving Pearce, assignee, &c., by his solicitor, and filed in said clerk's office his replication to the answer of James H. Rice in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois, May Term, A. D. 1885.

THIRD NATIONAL BANK OF CHICAGO } In Chancery.
vs.
IRA FOOTE *et al.* }

The replication of J. Irving Pearce, assignee of S. G. Hooker & Co., complainant in cross-bill, to the answer of James H. Rice.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says that he will aver, maintain, and prove his cross-bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant,
102 without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all

which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said cross-bill he has already prayed.

JOHN H. THOMPSON,
Solicitor for Complainant in Cross-bill.

Endorsed: Filed May 27, 1885. Wm. H. Bradley, clerk.

Afterwards, to wit, on the first day of June, 1885, came the complainant, by its solicitors, and filed in said clerk's office its replication to the answer of James H. Rice in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the United States Circuit Court, Northern District of Illinois.

THE THIRD NATIONAL BANK }
vs. } In Chancery.
IRA FOOTE *et al.* }

103 The replication of The Third National Bank, complainant, to the separate answer of James H. Rice.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

LYMAN & JACKSON,
Solicitor- for Complainant.

Endorsed: Filed this 1st day of June, A. D. 1885. Wm. H. Bradley, clerk.

104 On the same day, to wit, on the first day of June, 1885, came the complainant, by its solicitors, and filed in said clerk's office its replication to the answer of J. Irving Pearce in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

U. S. OF AMERICA,
Northern District of Illinois, } ss:

In the United States Circuit Court, May Term, A. D. 1885.

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.* } In Chancery.

The replication of The Third National Bank, complainant, to the separate answer of J. Irving Pearce, assignee, etc.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained
105 material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by its said — it has already prayed.

LYMAN & JACKSON,
Solicitors for Complainant.

Endorsed: Filed this 1st day of June, A. D. 1885. Wm. H. Bradley, clerk.

106 Afterwards, to wit, on the second day of June, 1885, came J. Irving Pearce, by his solicitor, and filed in said clerk's office his answer to the amended cross-bill of James H. Rice in said entitled cause; which said answer is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Illinois, of the May Term, A. D. 1885.

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.* } In Chancery.

The separate answer of J. Irving Pearce, assignee of S. G. Hooker & Co., one of the defendants, to the amended cross-bill of James H. Rice filed in the above-entitled suit.

This defendant, reserving all right of exception to said cross-bill, for answer thereto says—

That he admits that September 21st, 1882, the Third National Bank of Chicago filed its bill of complaint in this court, on the chancery side thereof, against Ira Foote and others, and that this defendant as assignee was made a party defendant in said suit, as alleged in said cross-bill, and that it was alleged in the bill in said suit that said bank recovered a judgment against Ira Foote in this court for $14,635.55 and costs of suit, and that said judgment remained in full force and effect, and that an execution had been duly issued on said judgment and returned unsatisfied, as alleged in said cross-bill, and that it was also alleged in said bill that the
107 other defendants had property which ought to be turned over for the payment of said judgment, as alleged in said cross-bill, and that said Ira Foote filed his answer to said original bill, as alleged in said cross-bill.

And this defendant, further answering, says that said judgment in said original bill described was recovered in a suit brought by Huntington W. Jackson as receiver of the Third National Bank of Chicago against the said Ira Foote as guarantor of two certain promissory notes, signed by Wm. H. Wood, Caroline E. Couch, and James Couch, trustees of estate of Ira Couch, etc., for the sum of $5,000 each, dated July 1, 1876, payable to the order of Ira Foote, one on the first day of July, A. D. 1877, and the other on the first day of October, A. D. 1877; that in said suit the said Ira Foote pleaded that the said several supposed promises in the said declaration mentioned were and each of them was upon the consideration of money won by Stephen G. Hooker and George D. Lincoln, under the firm name of S. G. Hooker & Co., from the defendant by gaming, to wit, by buying and selling for defendant on the board of trade deals and options in grain, wheat, lard, and pork, which options and deals were to be settled upon differences alone; wherefore, by force of the statute, &c., the said supposed promises were wholly void; and that the said defendant, Ira Foote, further pleaded in said suit that the plaintiff ought not to have his aforesaid action against him, because he says that the several supposed
108 promises in the said declaration mentioned were and each of them was made upon consideration of money won by Stephen G. Hooker and George D. Lincoln from the defendant by gaming, to wit, dealing in options for grain and other commodities on the board of trade upon differences alone, wherein neither party had or was to deliver or receive any such articles bought or sold, all of which the said plaintiff had notice; wherefore, by force of the statute, &c., the said supposed promises were and are wholly void; that issues were joined on said pleas; that upon the trial of said cause the said Ira Foote appeared and offered evidence and was heard and had his day in court, and that upon such trial the issues were found in favor of the plaintiff and against said defendant, Foote, and that a judgment was entered upon such finding in favor of said plaintiff and against said defendant, Foote; that said judgment still remains not reversed or vacated and in full force and effect, as by the records and files of this court will more fully appear; and this defendant sets up the said trial, finding, and judgment as a

final adjudication of all the matters therein tried and determined, and prays that he may have the same benefit and advantage as if he had pleaded the same.

And this defendant, further answering, says that the matters and things by said complainant in said cross-bill alleged are substantially the same matters alleged and set up by said Ira Foote
109 in his defence in said suit; that said matters have been adjudicated and are forever settled by the judgment in said suit, and that said judgment is a bar to any relief upon the grounds stated in said cross-bill.

And this defendant, while insisting that he is not bound to answer the further allegations of said cross-bill and without waiving his rights to insist upon said trial and judgment as a final adjudication of the matters in said cross-bill alleged and each and every of them, further answering, says he admits that during the time in said cross-bill alleged Stephen G. Hooker and George D. Lincoln were co-partners under the firm name of S. G. Hooker & Co. as grain and commission merchants, doing business on the Chicago Board of Trade, and that said Ira Foote was and had been a contractor and builder, as alleged in said cross-bill; but he denies that an agreement was entered into by and between said Foote and said S. G. Hooker & Company by which said S. G. Hooker & Company were to deal in differences for said Foote by purporting to buy grain and provisions for account and risk of said Foote, and denies that it was agreed that in no event were any purchases or sales thus made to remain open until the day of delivery, or that they were in all cases to be settled prior to the maturity of such contracts by the payment by said S. G. Hooker & Co. of the difference in the price of the article thus purchased or sold, based upon the market price upon the board of trade, and denies that there was to be no delivery of any
110 article thus to be purchased or sold by said S. G. Hooker & Co. for said Foote, and denies that no cash or spot grain or provisions whatever was to be dealt in, as alleged in said cross-bill, and says that he is informed and believes and charges the fact to be that the agreement between said Ira Foote and S. G. Hooker & Co. was that said S. G. Hooker & Co. or the brokers and agents of said Ira Foote should buy and sell grain and other commodities for and on account of said Foote according to the legal and usual course of dealing on the Chicago Board of Trade, and that, after deducting the ordinary and usual charges as commission men on such sales and purchases, they should pay over to said Foote the profits on such sales and purchases and should charge said Foote with the losses which might be incurred on such sales and purchases and should be reimbursed by said Foote for all such losses.

This defendant, further answering and still insisting that these matters have been settled and adjudicated in and by said judgment hereinbefore mentioned and are not material to be answered in this suit, says that he admits that said S. G. Hooker & Co. undertook to and claimed that they did buy and sell for the account of said Foote, on the Chicago Board of Trade, between November, 1874, and June, 1876, a large amount of corn, wheat, pork, and lard; that

they credited said Foote with the profits and charged him with the losses on such transactions, and that in or about the month of
111 June, 1876, they rendered an account of all such transactions had on account of said Foote to said Foote, showing a net loss on such transactions and an indebtedness of said Foote to said S. G. Hooker & Co. of about $22,000, but he denies that said sales and purchases were made pursuant to the agreement in said cross-bill alleged, and denies that the losses claimed by S. G. Hooker & Co. to have been paid out arose from paying or receiving the difference in accordance with the contract alleged in said cross-bill to have been made between said Hooker & Co. and said Foote, and says that in said transactions the articles bought and sold were sometimes delivered and the losses or profits sometimes settled for without delivery, but that all of said transactions were valid and *bona fide* sales or purchases, sanctioned by the rules of the board of trade and by the laws of the State of Illinois.

This defendant, further answering, denies that to settle the said differences in account the said Ira Foote passed over to said S. G. Hooker & Co. the four notes in said cross-bill described, as alleged in said cross-bill, but says that he is informed and believes that when the account was rendered by said S. G. Hooker & Co. to said Ira Foote, showing a large balance of indebtedness of said Foote to said S. G. Hooker & Co. for losses incurred and moneys paid out for and on behalf of said Foote and commissions chargeable to said Foote for services in buying and selling property on his account, the said Foote made objections to some of the charges; that a compromise and some deduction was made, and thereupon a
112 balance was agreed upon as due S. G. Hooker & Co. from said Foote, and said Foote made and delivered to said S. G. Hooker & Co. his promissory note for the amount agreed upon by and between said Foote and Hooker & Co. as due to said Hooker & Co. from said Foote; that some time afterward said Foote desired to pay said note, and thereupon assigned, transferred, and delivered to said S. G. Hooker & Co. the four notes in said cross-bill mentioned, with a small amount in cash, in payment and satisfaction of his note, the said four notes being guaranteed by said Foote.

This defendant, further answering, admits that in December, 1876, two of said four notes were delivered to the Third National Bank of Chicago as collateral security with some other securities as collateral security for an indebtedness of about $13,000 due said bank from S. G. Hooker & Co.; but this defendant denies that said Third National Bank received said two notes of $5,000 each from the firm of S. G. Hooker & Co. with full knowledge or with any knowledge or notice that said notes were turned over to said S. G. Hooker & Co. in settlement of an illegal or gambling debt claimed by said S. G. Hooker & Co. to be due them from said Ira Foote, and denies that said bank from that time to the present has held said notes or either of them knowing the same were wrongfully turned over to said S. G. Hooker & Co. or liable to the same defences in the hands of said bank as they would have been in the hands of said

S. G. Hooker & Co., and says that said notes were taken
113 by said bank in good faith as collateral security for money loaned and justly owing to said bank and without any knowledge on the part of said bank that they were open to any defence on the part of the makers or the guarantor thereon and without any knowledge or notice whatever that they had been taken by said S. G. Hooker & Co. upon any illegal consideration whatever.

This defendant, further answering, admits that soon after the transfer of said two notes to said bank the said S. G. Hooker & Co. made a voluntary assignment to this defendant for the benefit of their creditors; that said assignment was dated the 20th day of February, A. D. 1877, and was delivered to and accepted by this defendant on or about said date and remains in full force and effect, and that a copy of this assignment is attached to the cross-bill filed by this defendant in the above-entitled cause; that by said assignment the said two promissory notes in said cross-bill of said James H. Rice mentioned and delivered to the said Third National Bank were assigned to this defendant, subject to the claim of said bank upon them; that this defendant has paid a dividend of 30 per cent. on the claims against said S. G. Hooker & Co., but that the balance of said claims, amounting to several thousand dollars, remains unpaid; that this defendant has been obliged to incur and pay out large sums of money for costs, fees, and expenses in litigation neces-
114 sarily carried on to protect and enforce the claims belonging to the estate assigned to him, and has been obliged to pay and has paid a large sum of money, amounting to about $8,000, in payment of a judgment recovered against him by Ira Foote in a suit growing out of said assignment, and that he is entitled to a large sum of money for services rendered by him as such assignee, and that after the payment of the amount due to said bank from said S. G. Hooker & Co. this defendant is entitled to receive the balance of said judgment recovered by said bank against said Ira Foote.

This defendant, further answering, denies that said Ira Foote transferred or assigned his interest on said two promissory notes for a valuable consideration to said complainant in said cross-bill, and denies that said complainant in said cross-bill is a *bona fide* owner of said notes, as alleged in said amended cross-bill, and says that if any transfer of his interest in said notes has been made by said Foote to said Rice the same was made without consideration and to hinder, delay, and defraud the creditors of said Foote, and is void; and this defendant denies that said Foote had any interest in said notes at any time since said notes were transferred to said S. G. Hooker & Co., but he admits that said judgment described in the original bill in this cause was based on the guaranty of said Ira Foote.

This defendant, further answering, denies that the original
115 transaction between said S. G. Hooker & Company and said Ira Foote was a wager or bet on the price of grain and provisions, and denies that it constituted an option contract prohibited by section 130 of chapter 38 of the General Statutes of the State of

Illinois, as alleged in said amended cross-bill, and says that this and all other defences of said Ira Foote were tried and adjudicated upon in said suit brought by said bank against said Foote, and this defendant insists upon said trial and judgment as an adjudication of said matters, and insists that said allegation of said Rice in his cross-bill is immaterial, and that this defendant is not bound to answer the same.

And this defendant, further answering and insisting that the matter was settled and adjudicated on the trial of said suit of said bank against said Foote and relying upon said adjudication as a complete answer, says that the consideration of said Ira Foote's guaranty upon said two notes has not failed, as alleged in said cross-bill, and denies that no title to said notes passed to said S. G. Hooker & Co., and denies that the title of said notes has been vested in said complainant, Rice, as alleged in said cross-bill, and insists that said S. G. Hooker & Co. acquired a good and valid title to said notes, and that said Rice has no interest in said notes or in said judgment recovered by said bank against said Foote.

116 And this defendant, further answering, says that on the 12th day of May, 1879, he paid to the receiver of said Third National Bank $1,570.45, which was applied on the indebtedness of said S. G. Hooker & Co. to said bank; that he claims that this sum, as the interest thereon, should be repaid to him, and that the said bank should collect the whole of their claim against said S. G. Hooker & Co. from the judgment against said Foote, as if this sum had never been paid, and with this correction he believes the statements in said cross-bill as to the amounts due said bank from said S. G. Hooker & Co. substantially correct.

This defendant, further answering, says that whether or not the original transaction between said Ira Foote and said S. G. Hooker & Company was a gaming contract was a question involved and contested in the trial of said suit hereinbefore mentioned brought by said bank against said Ira Foote; that the trial, finding, and judgment in said suit settled that it was not a gaming contract, and this defendant relies upon and sets up the judgment in said suit as an adjudication of said matter; but, without waiving his right to rely upon such adjudication, he denies that said transaction was a gaming contract and denies that it was void, and denies that said bank could not claim said notes as innocent purchaser thereof, and denies that said judgment described in said original bill was based on a gaming contract, and denies that said judgment ought

117 to be vacated or set aside in equity, as alleged in said cross-bill.

All which matters this defendant is ready to aver, maintain, and prove; and, having answered the said cross-bill, this defendant prays to be hence dismissed with his reasonable costs & charges.

J. IRVING PEARCE, *Assignee.*

JOHN H. THOMPSON,
Solicitor for Defendant J. Irving Pearce, Assignee.

(Endorsed:) Filed June 2, 1885. Wm. H. Bradley, clerk.

118 Afterwards, to wit, on the eighteenth day of June, 1885, came James H. Rice, the complainant in the cross-bill, by his solicitors, and filed in said clerk's office his replication to the answer of the Third National Bank of Chicago in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the United States Circuit Court, Northern District of Illinois, May Term, A. D. 1885.

THE THIRD NATIONAL BANK OF CHICAGO *vs.* IRA FOOTE *et al.* } In Chancery.

The replication of James H. Rice, complainant in cross-bill, to the answer of The Third National Bank of Chicago.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says that he will aver, maintain, and prove his cross-bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain,
119 untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said cross-bill he has already prayed.

BISBEE, AHRENS & DECKER,
Solicitors for Complainant.

Endorsed: Filed this 18th day of June, A. D. 1885. Wm. H. Bradley, clerk.

On the same, to wit, on the eighteenth, day of June, 1885, came James H. Rice, by his solicitors, and filed in said clerk's office his replication to the answer of J. Irving Pearce in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the United States Circuit Court for the Northern District of Illinois, May Term, A. D. 1885.

THE THIRD NATIONAL BANK OF CHICAGO *vs.* IRA FOOTE *et al.* } In Chancery.

120 The replication of James H. Rice, complainant in cross-bill, to the answer of J. Irving Pearce.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says that he will aver, maintain, and prove his cross-bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said cross-bill he has already prayed.

BISBEE, AHRENS & DECKER,
Solicitors for Complainant.

Endorsed: Filed this 18th day of June, A. D. 1885. Wm. H. Bradley, clerk.

121 Afterwards, to wit, on the twenty-second day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO *vs.* IRA FOOTE *et al.* } In Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the motion of said bank to withdraw its answer to the cross-bill of James H. Rice and to file an answer to a part of said cross-bill and a plea to the remainder of the same, and after hearing arguments of counsel the court sustains said motion, the same to be

without prejudice and not to delay the taking of evidence before the master.

122 Afterwards, to wit, on the twenty-fourth day of June, 1885, came the Third National Bank of Chicago, by its solicitors, and filed in said clerk's office its plea and answer to the amended cross-bill of James H. Rice in said entitled cause; which said plea and answer are in the words and figures following, to wit:

Plea and Answer.

In the Circuit Court of the United States for the Northern District of Illinois, May Term, A. D. 1885.

THIRD NATIONAL BANK *vs.* IRA FOOTE *et al.* } In Chancery.

The plea of the Third National Bank of Chicago to part and answer to the residue of the amended cross-bill of James H. Rice.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said amended cross-bill to be true in manner and form as the same are therein set forth or alleged, as to so much of the said bill which seeks to vacate, annul, and set aside the judgment rendered by the United States circuit court for the northern district of Illinois on the 17th day of April, 1882, in favor of the Third National Bank of Chicago against Ira Foote for the sum of $14,635.55, this defendant, leave of court having first been obtained, pleads in bar, and for plea says that the

123 said judgment in said amended cross-bill described was recovered in a certain suit brought by Huntington W. Jackson, as receiver of the Third National Bank of Chicago, in the said circuit court of the United States for the northern district of Illinois, which said suit was afterwards amended so that the Third National Bank of Chicago was substituted as plaintiff in lieu of the said Huntington W. Jackson, as receiver aforesaid, against the said Ira Foote, as guarantor of two certain promissory notes signed by William H. Wood, Caroline E. Couch, and James Couch, trustees of estate of Ira Couch, etc., for five thousand dollars ($5,000) each, dated July 1st, 1876, payable to the order of said Ira Foote, one on the 1st day of July, 1877, and the other on the 1st day of October, 1877, which said two notes had been, some time in the month of December, 1876, and before the maturity thereof, delivered to the Third National Bank of Chicago by the firm of S. G. Hooker & Co. as collateral security for an indebtedness of about thirteen thousand dollars due to the said Third National Bank from the said firm of S. G. Hooker & Co.

That in said suit so brought as aforesaid the said Ira Foote pleaded that he did not promise in the manner and form as the plaintiff had complained against him, and further pleaded that said several supposed promises in said declaration mentioned were and each of them

was upon a condition of money won by Stephen G. Hooker and George D. Lincoln, under the firm name of S. G. Hooker &
124 Co., from the defendant by gaming, to wit, by buying and selling for the defendant on the board of trade deals and options of grain, wheat, lard, and pork, which options were to be settled upon differences alone; wherefore, by force of the statutes, etc., the said several supposed promises were wholly void; and the said defendant, Ira Foote, further pleaded that the plaintiff ought not to have his aforesaid action against him, the defendant, because he says that the said several supposed promises in the said declaration mentioned were and each of them was made upon a consideration of money won by the said Stephen G. Hooker and the said George D. Lincoln from the defendant by gaming, to wit, dealing in options and deals of grain and other commodities on the board of trade upon differences alone, wherein neither party had or was to deliver or receive any such articles bought or sold, of all of which said plaintiff had notice; wherefore, by force of the statutes, etc., the said supposed promises were void; and the said Ira Foote further pleaded a plea of set-off.

And this defendant having replied to and taken issue upon the said pleas, the said issue came up to be tried before the Hon. Henry W. Blodgett, judge of said court; that a jury was waived; that a full defense was made by counsel on behalf of said Ira Foote, and after evidence was given, as well on behalf of the said Third National Bank of Chicago as of the said Ira Foote, the court found the issues for the said Third National Bank of Chicago and de-
125 livered the following opinion:

"This is a suit on a guarantee of payment by defendant of two promissory notes of $5,000 each made by the trustees of the estate of Ira Couch, both dated July 1st, 1876, and made payable to defendant, one on July 1st and the other on October 1st, 1877, with interest at the rate of eight per cent. per annum.

The plaintiff is receiver of the Third National Bank of this city, and the notes in question were delivered to the bank, with the guaranty of the defendant written thereon, about December thirtieth, 1876, with other notes, as collateral security for the payment of a note of S. G. Hooker & Co. to the bank for the sum of $13,900, due from that firm to the bank for money loaned, the note of Hooker & Co. being dated December 30, 1876, payable to the bank in ninety days after date, with interest at ten per cent. per annum.

The defense insisted on at the trial is that the two notes in question were transferred by the defendant to the firm of S. G. Hooker & Co. in settlement of a claim or indebtedness due from the defendant to said firm for certain gambling dealings conducted by the firm for the defendant on the Chicago Board of Trade. The facts as developed by the proof appear to be that in the fall of 1874 and for about two years thereafter the firm of S. G. Hooker & Co. were brokers and commission merchants, dealing in grain and provisions on the board of trade in this city; were members of the
126 board, and transacted business for their customers under its rules and regulations; that Foote had some dealings on the

board through another broker, in which his broker had taken in and paid for a large quantity of oats which had been bought on an order for the defendant, but the expenses of storing, interest, etc., had been so large that the defendant had become dissatisfied, and some difficulty occurred in effecting a settlement with his broker. Mr. Hooker, of the firm of S. G. Hooker & Co., was applied to and counseled with by the defendant in securing settlement, and Hooker, being an old friend of the defendant, advised him that if he wished to speculate or deal any more on the board of trade he had better do it with his, Hooker's, firm. The defendant consented to this, provided he could only trade or deal in differences—that is, Hooker's firm were not to take in or carry any commodities bought, but defendant was to pay or receive the differences between the selling and buying or buying and selling prices of the commodities dealt in. In pursuance of this arrangement the defendant from time to time gave orders to Hooker & Co. to buy or sell commodities on the board of trade for his account, and they executed these orders by buying or selling, as directed, on the board in the usual form of such transactions, where the seller had the option to deliver within a certain time, as, for illustration, during the whole of the next month
127 or during the first half or last half of the next month or of the month in which the transaction took place, the only option in the transaction being as to the time within which the seller was allowed to make delivery. These dealings continued until some time in May or June, 1876, Hooker & Co. buying or selling grain, pork, or lard, as directed by the defendant, and settling the differences, paying the money when the market was against the defendant and receiving it for him when the market was in his favor, charging to him whatever sums were paid in settling differences when they were against him and giving him credit when they received differences in his favor.

In two or three transactions the firm seem to have taken in and paid for grain and provisions bought for the defendant, and held them for a short time and then sold them, charging the defendant with the interest, storage, etc., incident to such transactions.

The defendant was also debited on the books of the firm with commissions for transacting the business and with divers sums of money paid him from time to time, so that at the time the dealings of the firm for the defendant closed he stood debited to them on their books in the sum of about $22,000. In payment of this indebtedness the defendant transferred and delivered to Hooker & Co. four notes of $5,000 each, held by him against the Couch estate, the payment of which notes he guaranteed, and two of which are the notes in question, and the firm of Hooker & Co. trans-
128 ferred the two notes now before the court, with the defendant's guarantee of payment thereon, to the Third National Bank of Chicago to secure their own indebtedness to the bank for money borrowed.

The testimony in this case fully satisfies me that Mr. Hooker, when he assumed for his firm to act as the defendant's broker in his dealings on the board of trade, did not contemplate or intend to make

was upon a condition of money won by Stephen G. Hooker and George D. Lincoln, under the firm name of S. G. Hooker &
124 Co., from the defendant by gaming, to wit, by buying and selling for the defendant on the board of trade deals and options of grain, wheat, lard, and pork, which options were to be settled upon differences alone; wherefore, by force of the statutes, etc., the said several supposed promises were wholly void; and the said defendant, Ira Foote, further pleaded that the plaintiff ought not to have his aforesaid action against him, the defendant, because he says that the said several supposed promises in the said declaration mentioned were and each of them was made upon a consideration of money won by the said Stephen G. Hooker and the said George D. Lincoln from the defendant by gaming, to wit, dealing in options and deals of grain and other commodities on the board of trade upon differences alone, wherein neither party had or was to deliver or receive any such articles bought or sold, of all of which said plaintiff had notice; wherefore, by force of the statutes, etc., the said supposed promises were void; and the said Ira Foote further pleaded a plea of set-off.

And this defendant having replied to and taken issue upon the said pleas, the said issue came up to be tried before the Hon. Henry W. Blodgett, judge of said court; that a jury was waived; that a full defense was made by counsel on behalf of said Ira Foote, and after evidence was given, as well on behalf of the said Third National Bank of Chicago as of the said Ira Foote, the court found the issues for the said Third National Bank of Chicago and de-
125 livered the following opinion:

"This is a suit on a guarantee of payment by defendant of two promissory notes of $5,000 each made by the trustees of the estate of Ira Couch, both dated July 1st, 1876, and made payable to defendant, one on July 1st and the other on October 1st, 1877, with interest at the rate of eight per cent. per annum.

The plaintiff is receiver of the Third National Bank of this city, and the notes in question were delivered to the bank, with the guaranty of the defendant written thereon, about December thirtieth, 1876, with other notes, as collateral security for the payment of a note of S. G. Hooker & Co. to the bank for the sum of $13,900, due from that firm to the bank for money loaned, the note of Hooker & Co. being dated December 30, 1876, payable to the bank in ninety days after date, with interest at ten per cent. per annum.

The defense insisted on at the trial is that the two notes in question were transferred by the defendant to the firm of S. G. Hooker & Co. in settlement of a claim or indebtedness due from the defendant to said firm for certain gambling dealings conducted by the firm for the defendant on the Chicago Board of Trade. The facts as developed by the proof appear to be that in the fall of 1874 and for about two years thereafter the firm of S. G. Hooker & Co. were brokers and commission merchants, dealing in grain and provisions on the board of trade in this city; were members of the
126 board, and transacted business for their customers under its rules and regulations; that Foote had some dealings on the

board through another broker, in which his broker had taken in and paid for a large quantity of oats which had been bought on an order for the defendant, but the expenses of storing, interest, etc., had been so large that the defendant had become dissatisfied, and some difficulty occurred in effecting a settlement with his broker. Mr. Hooker, of the firm of S. G. Hooker & Co., was applied to and counseled with by the defendant in securing settlement, and Hooker, being an old friend of the defendant, advised him that if he wished to speculate or deal any more on the board of trade he had better do it with his, Hooker's, firm. The defendant consented to this, provided he could only trade or deal in differences—that is, Hooker's firm were not to take in or carry any commodities bought, but defendant was to pay or receive the differences between the selling and buying or buying and selling prices of the commodities dealt in. In pursuance of this arrangement the defendant from time to time gave orders to Hooker & Co. to buy or sell commodities on the board of trade for his account, and they executed these orders by buying or selling, as directed, on the board in the usual form of such transactions, where the seller had the option to deliver within a certain time, as, for illustration, during the whole of the next month
127 or during the first half or last half of the next month or of the month in which the transaction took place, the only option in the transaction being as to the time within which the seller was allowed to make delivery. These dealings continued until some time in May or June, 1876, Hooker & Co. buying or selling grain, pork, or lard, as directed by the defendant, and settling the differences, paying the money when the market was against the defendant and receiving it for him when the market was in his favor, charging to him whatever sums were paid in settling differences when they were against him and giving him credit when they received differences in his favor.

In two or three transactions the firm seem to have taken in and paid for grain and provisions bought for the defendant, and held them for a short time and then sold them, charging the defendant with the interest, storage, etc., incident to such transactions.

The defendant was also debited on the books of the firm with commissions for transacting the business and with divers sums of money paid him from time to time, so that at the time the dealings of the firm for the defendant closed he stood debited to them on their books in the sum of about $22,000. In payment of this indebtedness the defendant transferred and delivered to Hooker & Co. four notes of $5,000 each, held by him against the Couch estate, the payment of which notes he guaranteed, and two of which are the notes in question, and the firm of Hooker & Co. trans-
128 ferred the two notes now before the court, with the defendant's guarantee of payment thereon, to the Third National Bank of Chicago to secure their own indebtedness to the bank for money borrowed.

The testimony in this case fully satisfies me that Mr. Hooker, when he assumed for his firm to act as the defendant's broker in his dealings on the board of trade, did not contemplate or intend to make

any different transaction for the defendant than for his other customers. He undoubtedly intended to make purchases or sales where the buyer had an option as to the time within which to make delivery, and he intended to so conduct the defendant's transactions as to avoid taking and paying for any article bought. He seems to have explained to the defendant how, by reason of his many customers, some of whom were sellers and others buyers on the market, he could so manage the defendant's deals that he need not take any commodity bought, but could settle simply the difference between the purchase price and the market price when the seller had the right of delivery. Hooker did not, I am satisfied from the proof, intend to deal in 'options to buy or sell at a future time,' such as are prohibited by the Illinois statutes (Revised Statutes of Ill., chap. 38, sec. 130), but intended, as I have said, to deal in contracts and to settle the differences, so as to avoid paying for and carrying the commodities bought. I am also satisfied that while the defendant may have known but little when he commenced with this firm as to the mode
129 in which the business was to be transacted by them for him, yet he did not contemplate dealing in 'puts and calls' or 'options to buy and sell at a future time,' and that he was very soon aware of the forms and modes in which the business was done for him by the firm. He intended, without doubt, that his brokers should so manage his trades that the differences should be paid or collected instead of his taking and holding the article dealt in or having his broker do it for him and at his expense. He may have contemplated dealing wholly in differences to such an extent as to make the transactions such as have been construed by the courts of this State to be wager contracts or gambling contracts at common law, but he did not, I am satisfied, intend that his brokers should make for him such contracts as are expressly made illegal by the Illinois statutes, but, at most, they were to be transactions where it was not intended that any commodity should be actually received or delivered, but that he was to deal in differences coming perhaps within the rule laid down by the supreme court of this State in Lyon *v.* Culbertson, 83 Ill., 33, where the court said:

"'The fact that no wheat was offered or demanded shows that neither party expected the delivery of any wheat, but in case of default in keeping margins good or even as to the time for delivery they only expected to settle the contract on the basis of differences without even performing or offering to perform his part of the
130 agreement, and if this was the agreement it was only gaming on the price of wheat.

If such gambling transactions shall be permitted it must eventually lead to what are called "corners," which engulf hundreds in utter ruin, derange and unsettle prices, and operate injuriously on the fair and legitimate trader in grain as well as the producer, and are pernicious and highly demoralizing to the trade. A contract thus settled is no more than a bet on the price of grain during or at the end of a limited period. If the one party is not to deliver or the other to receive the grain it is in all but name gambling on

the price of the commodity, and the change of names never changes the quality or nature of things.'"

In other words, as I understand the court in this case, where there is an intention to deal only in differences, the transaction is held to be a wager contract at common law.

It is also equally evident from common proof that this indebtedness which accrued from the defendant to S. G. Hooker & Co. was for commissions earned by the firm in making trades for the defendant, duly authorized by him, and for moneys actually paid by the firm in the settlement of differences in such trades, and that none of these differences were paid upon 'options to buy or sell grain or other commodities at a future day,' but upon sales or purchases of grain and other commodities where the seller had only an option as to the time of delivery, contracts which have been held not to be within the Illinois statute and to be valid and binding upon both parties.

131 Pixley *v.* Boynton, 79 Ill., 351.
Wolcott *v.* Heath, 78 Ill., 433.
Cole *v.* Milmine, 88 Ill., 349.
Porter *v.* Viets, 1 Bis., 187.
Clark *v.* Foss, 7 Bis., 540.
Sawyer *v.* Taggart, 14 Bush., Ky., 727.
Gilbert *v.* Caugar, 10 Legal News, 340.

Assuming, then, that the defendant, by his agreement with Hooker & Co., intended to deal only in differences, and that the bulk of the debit against him on the books of the firm accrued for differences paid by the firm on trades made for him in pursuance of this agreement, the only question is, Do these facts so taint this paper as to make this guaranty of payment void in the hands of this bank?

There is no dispute but what the bank is a *bona fide* holder of the notes, with defendant's guaranty thereon, taken for value before due and without notice of any defense. The statute of Illinois makes notes and other securities given in payment of gambling contracts to sell or buy grain or commodities at a future time void in the hands of any assignee or holder, but the transactions out of which this indebtedness between Hooker & Co. and the defendant arose were not 'options to sell or buy at a future time,' but were contracts of sale in which the seller was bound to deliver at a future time within certain limits. They were not, therefore, gambling contracts within the Illinois statute. They may have been, as I have already said, gambling or wager contracts at common law to such an

132 extent as that if Hooker & Co. had sued the defendant he could have successfully defended, but the common law will not help either party to a gambling contract. It simply leaves them where it finds them. If one having lost money by gaming or on a wager pays it the law will not aid him to recover it back from the owner.

2 Smith's Leading Cases, 307.
Gregory *v.* King, 58 Ill., 169.

It seems to me to follow, then, as a necessary conclusion, that the defendant having delivered these notes, with his guaranty upon them, to Hooker & Co. in settlement of their demand against him, even though their demand was tainted as a gambling contract at common law, he cannot be heard to set up the illegality of the dealings between himself and Hooker & Co. as a defense to these guarantees in the hands of a *bona fide* holder. He has put this paper, with his guaranty affixed to it, afloat upon the market. Unless a clear case of violation of the statute is made out, and the burden of making such a case is upon the defendant, this guaranty in the hands of a *bona fide* holder is valid and not tainted by any of the equities between the original parties. I may say, further, that it seems, from the defendant's own testimony and from the accounts rendered, a transcript of S. G. Hooker & Co.'s books, that the settlement in question and upon which these notes and guarantees were given was for an account into which cash paid, commissions, and
133 other elements entered which were not of a gambling nature, and it is extremely doubtful, in my mind, even if suit had been brought by S. G. Hooker & Co. against the defendant, he could, upon showing now made upon this trial, have successfully defended against their claim.

The issues are found for the plaintiff."

And that thereupon a judgment of $14,635.55 and costs of suit was entered of record, upon such finding of the court, in favor of the said plaintiff, The Third National Bank of Chicago, and against the said defendant, Ira Foote; and the said judgment still remains, as alleged in said original bill, not reversed or vacated and in full force and effect, as will by the records and files of this court, to which reference is hereby made and made a part hereof, more fully appear.

And this defendant, The 3d Nat'l Bank of Chicago, avers that the aforesaid judgment rendered against the said Ira Foote is the same judgment which the said James H. Rice, by his amended cross-bill, seeks to vacate, annul, and set aside; all of which matters and things this defendant is ready to verify, maintain, and prove as this honorable court shall direct, and doth plead the same in bar to so much or such parts of this bill as are heretofore mentioned to be pleaded unto, and humbly prays the judgment of this honorable court thereupon, and whether it is liable or shall be compelled to make any further answer to so much of the said bill as it has hereinbefore pleaded unto.

134 And this defendant, insisting upon the said plea, and in nowise waiving or departing from the same, and saving to itself the benefits thereof, and also saving and reserving to itself all and all manner of advantage and benefit of exception to the many insufficiencies, errors, and imperfections of the said amended cross-bill, for answer thereunto, or to so much thereof as it is advised concerns it to make answer unto, it, this defendant, leave of court first having been obtained, answers and says that it denies that the agreement entered into between the said S. G. Hooker & Co. and the said Ira Foote was such as alleged in said cross-bill, and avers

that said agreement was such as is set forth and stated in the opinion of court above set forth in said plea, and that all transactions carried on and performed under the said agreement between the said S. G. Hooker & Co. and the said Ira Foote were valid and *bona fide* and sanctioned by and in accordance with the rules of the board of trade and by the laws of the State of Illinois.

And this defendant, further answering, denies that in order to settle the said differences in the account of said Ira Foote with said S. G. Hooker & Co. the said Foote passed over to the said S. G. Hooker & Co. the four notes in the cross-bill described as alleged, and says that it was agreed that when the said account was rendered by the said Hooker & Co. to the said Foote, showing a large balance of indebtedness from the said Ira Foote to the said Hooker
135 & Co. for losses incurred and monies paid out for and on account of said Ira Foote and commissions for transacting the business and for services rendered in buying and selling property on his account and for divers sums of money and interest thereon paid to said Foote from time to time, which were chargeable to said Foote, and for insurance premiums and expenses arising from the storing of the goods so purchased and other causes, that said Foote made objections to some of the charges and that a compromise in some direction was made, and that thereupon a balance was agreed upon as due to the said Hooker & Co. from the said Ira Foote and the said Ira Foote made and delivered to the said Hooker & Co. his promissory note for the amount agreed upon as due from said Foote to said Hooker & Co.; that some time after that the said Foote desired to pay the said note, and thereupon assigned, transferred, and delivered to the said Hooker & Co. the four notes in said cross-bill mentioned, with a small amount of cash in payment and satisfaction of his note, the said four notes being guaranteed by said Ira Foote.

And this defendant, further answering, denies that the said Third National Bank of Chicago received the said two notes for $5,000 each with full knowledge or any knowledge or notice that said notes were turned over to said Hooker & Co. in settlement of any illegal or gambling debt claimed by said S. G. Hooker & Co. to be
136 due them from said Ira Foote, and denies that said Third National Bank from that time to the present has had said notes or any of them, knowing that the same were wrongfully turned over to the said S. G. Hooker & Co., and are liable to the same defenses in the hands of the said Third National Bank as they would have been in the hands of the said S. G. Hooker & Co., and says that the said notes were taken by the said bank in good faith as collateral security for money loaned and justly due to said bank and without any knowledge on the part of said bank that they were open to any defenses on the part of the makers or the guarantor thereon, and without any knowledge whatever that they had been taken by said Hooker & Co. upon any illegal consideration whatsoever.

And this defendant, further answering, admits that soon after the transfer of said two notes to the said bank the said Hooker & Co.

made a voluntary assignment to J. Irving Pearce for the benefit of their creditors.

And this defendant is informed and believes and so charges the fact to be that after the collection of the amount of the judgment rendered in its favor against the said Ira Foote, and after payment out of the said judgment of the amount due it from the said firm of Hooker & Co., it should pay the balance of said judgment recovered to the said J. Irving Pearce by virtue of the assignment to him by the said Hooker & Co.

This defendant, further answering, denies that said Ira Foote transferred or assigned his interest in said two promissory
137 notes for a valuable consideration to said complainant in said cross-bill, and denies that the complainant in said cross-bill is a *bona fide* owner of said notes, as alleged in said amended cross-bill, and says that if any transfer of his interest in said notes was made by said Foote to said Rice the same was made without any consideration and in violation and contempt of an injunction heretofore issued upon said original bill, and for the purpose of hindering, delaying, and defrauding the creditors of said Ira Foote, and that such transfer was void and had no effect; and this defendant denies that the said Ira Foote had any interest in said notes at any time since said notes were transferred to said Hooker & Co., but admits that the judgment described in the original bill was based on the guarantee of said Ira Foote.

And this defendant, further answering, denies that the original transaction between said S. G. Hooker & Co. and the said Ira Foote was a wager or bet on the prices of grain and provisions, and denies that it constituted an option contract prohibited by sec. 130, chap. 38, of the General Statutes of Illinois, as alleged in said amended cross-bill, and says, further, that the allegation of said Rice in his own bill is immaterial, and that this defendant is not bound to answer the same, and denies that said Rice had any interest in the said notes or in the said judgment recovered by the said Third National Bank against the said Ira Foote.

138 And this defendant, further answering, says that some time heretofore it was paid by the said J. Irving Pearce, as assignee of the said Hooker & Co., the sum of $1,570.45, which said sum was applied upon the indebtedness of said Hooker & Co. to said bank, and that the said J. Irving Pearce, as assignee of said Hooker & Co., in his cross-bill filed herein makes claim that this defendant should, after collecting the judgment obtained by it against the said Ira Foote, refund to said J. Irving Pearce the sum so paid by him as aforesaid; and this defendant further says that should it be determined that the amount so paid to it by the said Pearce as assignee should be refunded to him, the amount stated in said bill to be due to said bank on the 25th of May, 1885, is incorrect, but that the said sum due it on said date, after making a credit of $1,570.45, was $9,655.80.

And this defendant, further answering, denies that the said original transaction between the said Hooker & Co. and the said Ira Foote was a gaming contract and absolutely void by reason thereof,

and that the Third National Bank could not claim said notes as innocent purchasers thereof, and further denies that said judgment in favor of said Third National Bank against said Ira Foote was based on a gaming contract within the statutes of Illinois, and denies that said judgment ought to be vacated and set aside by any court, as alleged in said cross-bill.

This defendant, further answering, denies that the com-
139 plainant is entitled to the relief or any part thereof in the said amended cross-bill demanded, and prays to be henceforth dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THIRD NAT'L BANK OF CHICAGO,
By LYMAN & JACKSON, *Its Sol'rs.*

LYMAN & JACKSON, *Sol'rs.*

This is to certify that in our opinion the above plea to a part of the amended cross-bill of James H. Rice is well founded in point of law.

LYMAN & JACKSON, *Sol'rs.*

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Huntington W. Jackson, being first duly sworn, deposes and says that he is receiver of the Third National Bank of Chicago, and that the above plea to a part of the amended cross-bill of James H. Rice is not interposed for delay, and that it is true in point of fact.

HUNTINGTON W. JACKSON.

Subscribed and sworn to before me this 24th day of June, A. D. 1885.

[SEAL.] RICHARD L. HERBERT,
Notary Public.

Endorsed · Filed June 24, 1885. Wm. H. Bradley, clerk.

140 Afterwards, to wit, on the twenty-fifth day of June, 1885, came James H. Rice, by his solicitors, and filed in said clerk's office his replication to the answer of the Third National Bank of Chicago in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court Thereof, May Term, A. D. 1885.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE, MYRON A. DECKER, JAMES H. RICE, William H. Wood, James Couch, Caroline E. Couch, the Last Three as Trustees of the Estate of Ira Couch, Deceased; Lewis H. Bisbee, and S. W. Rawson, a Trustee. } In Chancery.

The replication of James H. Rice, cross-complainant, to the answer of the Third National Bank of Chicago to the amended cross-bill of said James H. Rice.

This repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says that he will aver, maintain, and prove his said amended
141 cross-bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said amended cross-bill he has already prayed.

BISBEE, AHRENS & DECKER,
Solicitors for Complainant.

Endorsed: Filed this 25th day of June, A. D. 1885. Wm. H. Bradley, clerk.

142 Afterwards, to wit, on the fifth day of October, in the adjourned October term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.* } In Chancery.

Now come the parties, by their solicitors, and the complainant's

motion to dismiss the cross-bill of James H. Rice for want of a replication to the plea to said cross-bill. Now comes said Rice, by his solicitor, and moves the court for leave to reply to said plea; and, after hearing arguments of counsel, the court overrules said motion to dismiss, and leave is given said Rice to file a replication to said plea *nunc pro tunc* as of July sixth, 1885.

143 Afterwards, to wit, on the sixth day of October, 1885, came James H. Rice, by his solicitors, and filed in said clerk's office his replication to the plea of the Third National Bank of Chicago in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the United States Circuit Court for the Northern District of Illinois, Oct. Term, A. D. 1885.

THIRD NATIONAL BANK OF CHICAGO } In Chancery.
vs.
IRA FOOTE *et al.*

The replication of James H. Rice, complainant in cross-bill, to the plea of the Third National Bank of Chicago to the cross-bill of said James H. Rice.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said plea of the said defendant, for replication thereunto says that he will aver, maintain, and prove his cross-bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said plea of the said defendant is uncertain, untrue,
144 and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said plea contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said cross-bill he has already prayed.

BISBEE, AHRENS & DECKER,
Solicitors for Complainant.

Endorsed: Filed this sixth day of Oct., A. D. 1885, as of July 6th, 1885. Wm. H. Bradley, clerk.

145 Afterwards, to wit, on the third day of March, 1887, in the December term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.* } In Chancery.

Now come the parties, by their solicitors—the complainant, by Mr. Jackson; defendant Rice, by Mr. Bisbee, and J. I. Pearce, by Mr. Thompson—and this cause, being set for hearing this day, now comes on to be heard on pleadings and proofs, and, after hearing the arguments of counsel in part, further hearing herein is hereby postponed until to-morrow morning.

Afterwards, to wit, on the fourth day of March, 1887, in the December term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.* } In Chancery.

146 Now again come the parties, by their solicitors, and, after hearing further arguments upon the pleadings and proofs herein, and the same not being concluded, it is ordered that further hearing herein be postponed until Tuesday morning next.

147 On the fourth day of April, in the adjourned March term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Decree.

THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.* } In Chancery. Bill.

and

J. IRVING PEARCE, Assignee, &c.,
vs.
THIRD NATIONAL BANK OF CHICAGO *et al.* } Cross-Bill.

and

JAMES H. RICE
vs.
THIRD NATIONAL BANK OF CHICAGO *et al.* } Cross-Bill.

This cause having come on to be heard upon the pleadings and proofs filed herein, and counsel having been fully heard, and the

court being now fully advised herein, it is ordered, adjudged, and decreed—

(1.) That the complainant in the original bill is entitled to be paid, upon its judgment against Ira Foote set forth in said bill, the balance due it upon the note of S. G. Hooker & Co. referred to in the cross-bill of J. Irving Pearce, after crediting upon said note all payments made thereon, including the payment made by J.
148 Irving Pearce, as assignee of said S. G. Hooker & Co., which balance is found and admitted to be the sum of eight thousand four hundred and fifty-nine dollars.

(2.) That the cross-bill of J. Irving Pearce be, and the same is hereby, dismissed for want of equity at said cross-complainant's costs.

(3.) That the said James H. Rice is the equitable owner of the two notes of five thousand dollars ($5,000) each executed by the trustees of the Couch estate, dated July 1st, 1876; that the consideration of the transfer of said notes by Ira Foote to the firm of S. G. Hooker & Co. was a gambling consideration and the assignment void as between said Foote and his assignees for value and said S. G. Hooker & Co. and their voluntary assignee, said J. Irving Pearce, and said assignment is hereby wholly set aside as between said parties; that upon payment by said Rice to said bank of the amount due said bank upon said indebtedness of said Hooker & Co. to said bank the said Rice is entitled to have a delivery of said notes to him, together with an assignment of the judgment of said bank against said Foote, said judgment to be satisfied of record by said Rice upon the collection by him of said Couch estate notes or enough thereon to satisfy the amount to be paid by him to said bank, together with his costs and expenses; that upon such payment of said amount to said bank by said Rice within thirty
149 days from the date thereof the said bank deliver said notes to said Rice, together with an assignment duly executed of said judgment in its favor against said Foote; James H. Rice, the complainant in the cross-bill, to recover his costs upon his said cross-bill. J. Irving Pearce, assignee of S. G. Hooker & Co., prays an appeal to the Supreme Court of the United States, which is allowed upon filing a bond in the sum of five thousand dollars, to be approved by the court; certificate of evidence to be filed within thirty days.

150 On the hearing of said cause on the same day, to wit, the fourth day of April, 1887, the certificate of evidence in said cause was filed in said clerk's office and is in the words and figures following, to wit:

Certificate of Evidence.

In the United States Circuit Court for the Northern District of Illinois.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE *et al.* } In Chancery. Bill.

J. IRVING PEARCE, as Assignee of Stephen G. Hooker & Co.,
vs.
THE THIRD NATIONAL BANK OF CHICAGO *et al.* } Cross-Bill.

JAMES H. RICE
vs.
THE THIRD NATIONAL BANK OF CHICAGO *et al.* } Cross-Bill.

This is to certify that upon the hearing of the above-entitled cause upon the original bill and cross-bills the following evidence was introduced and read in evidence:

The depositions, exhibits, records, and evidence filed in said cause on the third day of March, 1887, and all orders made in the case of The Third National Bank of Chicago *vs.* Ira Foote, on the
151 law side of said court, and the assignment made by Ira Foote to James H. Rice.

152 In the Circuit Court of the United States for the Northern District of Illinois.

THIRD NATIONAL BANK OF CHICAGO
v.
IRA FOOTE *et al.* } Bill. In Chancery.

JAMES H. RICE
v.
THIRD NATIONAL BANK *et al.* } Cross-Bill.

JUNE 11TH, 1885.

Present: L. H. Bisbee, solicitor for James H. Rice and Ira Foote in original bill and complainant in cross-bill of Rice; J. H. Thompson, as solicitor for J. Irving Pearce, defendant in original bill and complainant in one of the cross-bills; Col. H. W. Jackson, for the Third National Bank in the original bill and in cross-bills.

And thereupon it is stipulated by counsel representing the respective parties that the order of reference herein shall be enlarged and include the original and both of the cross-bills filed herein.

It is further stipulated that the evidence heretofore taken before H. W. Bishop, master, and E. B. Sherman, master, upon reference may be considered as if taken under this reference for all purposes.

153 Adjourned to June 13th, 1885.

JUNE 17TH, 1885.

Present: L. H. Bisbee.
Case adjourned to June 18th, 1885.

JUNE 19TH, 1885.

By Col. JACKSON: I have served notice on Mr. Bisbee to this effect: "Please take notice that we shall, on Monday, June 22nd, 1885, at 10 o'clock a. m., before his honor Judge Blodgett, call up for disposition the demurrer embraced in the answer of the Third National Bank to the cross-bill of James H. Rice, and ask for leave to withdraw said answer and to plead to part of the said cross-bill and answer the residue thereof, and at the same time to have the order of reference to the master in chancery in the above case set aside."

By Mr. BISBEE: We go on to take the testimony of Mr. Foote with the understanding that the bare taking of his testimony is not in any way to affect the rights of the complainant on his motion served as above to call up the demurrer portion of the answer on Monday and the whole of the notice without prejudice to any of the
154 rights of the Third National Bank whatever and subject to their objection and motion to have the same stricken out.

JUNE 19TH, 1885.

IRA FOOTE, being first duly sworn, testified on behalf of James H. Rice and Ira Foote as follows:

Q. What is your name?
A. Ira Foote.
Q. What is your age?
A. Sixty-nine last April.
Q. Where do you reside?
A. Chicago.
Q. How long have you resided in Chicago?
A. Thirty-one years; came here in 1854.
Q. You came here in 1854?
A. Yes, sir.
Q. What business have you been engaged in since you have resided in Chicago?
A. Been builder until about ten years ago.
Q. For ten years you say you have been out of business?
A. Yes, sir.
Q. And previous to that you were a builder?
A. Yes, sir.
Q. What was the character of the business you did?
155 A. I was carpenter by trade. I did the wood-work.
Q. In what business were you engaged before you came to Chicago, before 1854?
A. About the same: have always worked at it since I was 18.
Q. Been engaged in any other business?
A. No; not at all.
Q. Are you acquainted with Stephen G. Hooker?
A. Yes, sir.
Q. How long have you known him?

A. I think in 1853 I first knew him.
Q. In 1853?
A. Yes; at Peru.
Q. Illinois?
A. Yes, sir.
Q. In what business was Mr. Hooker then engaged?
A. In the building business.
Q. Same that you were?
A. Yes, sir.
Q. Do you know when Mr. Hooker moved to Chicago?
A. I think he came here in 1854, but I can't tell; about that time. He was here when I came here.
Q. In what business has Mr. Hooker been engaged in Chicago?
A. First he was with me in the building, and then he went off. I don't know what he did do; I think the board of trade business; something like that.

Q. Do you know George D. Lincoln?
156 A. Yes; I know him.
Q. How long have you known him?
A. I think in about 1874 I got acquainted with him.
Q. In what business was he engaged when you first knew him?
A. He was in with Mr. Hooker in the board of trade business, selling and buying grain.
Q. What was the style of the firm?
A. S. G. Hooker & Company, I think it was.
Q. Who comprised the firm of S. G. Hooker & Company in 1874, 1875, and 1876?
A. I think it was Mr. Lincoln.
Q. Mr. Hooker and Mr. Lincoln?
A. Yes; that is what he told me; I didn't see him first.
Q. See who?
A. Mr. Lincoln for awhile after. He introduced him to me as his partner, Mr. Hooker did.
Q. Do you know James H. Rice?
A. Yes, sir.
Q. How long have you known him?
A. Known him probably 40 years.
Q. Been in any—engaged in business with him?
A. Yes; in the building business with him for 25 years.
Q. In the building business?
A. Yes; here in Chicago.
Q. In what business is Mr. Rice now engaged?
A. In the glass business.

Q. Were you in partnership with Mr. Rice for 25 years?
157 A. Yes, sir; I was in partnership with Mr. Rice.
Q. Do you know George A. Hook?
A. Yes, sir.
Q. How long have you known him?
A. From about the time of the fire; probably a year before.
Q. Where did you know him?

A. Here in Chicago. When I knew him first he was at the St. James hotel in some capacity; I don't know what.

Q. In this city?

A. In this city before the fire.

Q. Knew him in 1874 and 1875?

A. Yes, sir.

Q. Where was he then, and what doing?

A. In 1874 he went to work for Mr. Rice and me.

Q. For you and Mr. Rice?

A. Yes, sir.

Q. What doing?

A. Time-keeper and paymaster.

Q. What were you doing during those years, you and Mr. Rice?

A. Building here.

Q. Did you build the Tremont house, in the city?

A. Yes, sir.

Q. You built that—you did the wood-work on the Tremont house?

A. Yes, sir.

Q. Was Mr. Hook in your employ when you built that?

158 A. When I commenced it, yes; but he went out when we got it done, and went with Mr. Couch; he run the Tremont house; he hired him.

Q. Did you ever speculate on the board of trade?

(Objected to.)

A. Yes; I did speculate a little with a man by the name of George Adams.

Q. When was that?

A. I think it must have been in 1874—the early part of 1874; it might have been a little before that; I can't say.

Q. Was that your first experience on the Chicago Board of Trade?

A. Yes, sir.

Q. Did you do any speculating after you got through with George Adams?

(Objected to as leading and immaterial.)

A. Yes, with Mr. Hooker.

Q. You may state when you quit trading with George Adams and went to trading with S. G. Hooker & Company.

(Objected to.)

A. Mr. Adams had bought some oats for me and there was about $3,000 of it in my favor and I wanted him to sell it and he wouldn't, and drew on me for margins. I gave him, I think, $2,000 or $2,500, something like that, in margins—I don't know how much—and I said, I want to sell this, and I went to Mr. Hooker, as I knew Mr. Hooker and Mr. Rice, and asked them if they wouldn't

159 go to Mr. Adams to settle up the matter, I wanted to sell out, and he said I agreed to let him do as he was a mind to, but Mr. Adams came to me and said, "Now, Mr, Foote, if you let

me go on and suit myself, I have got an inside track on the oats business."

(Objected to.)

He gave me back the check that I gave him for margins, and the next day he came back to me with a statement for so much storage, so much for handling it; there was $900 in my favor and he gave me his check for it; that is why I left him. I didn't think of having anything more to do with that.

Mr. Jackson and Mr. Thompson object to the answer and move that it be stricken out for the reason that it is incompetent and irrelevant.

Q. After you left Mr. Adams what did you next do in relation to trading on the board of trade in the city of Chicago?

Mr. Thompson objects generally to all questions on the ground that the matter has been already adjudicated and heard in another suit.

Col. Jackson makes the same objection.

It is stipulated by counsel that this general objection by
160 solicitors for the Third National Bank and for Mr. Pierce need not be repeated during this examination, but shall be considered as extending to all questions to which the same may be applicable. Solicitors for Mr. Pierce and for the Third National Bank contend that the question of whether this was or was not a gambling contract has already been adjudicated in a suit at law, and that this issue cannot be properly raised in this action.

A. I dealt with Hooker & Lincoln after that.

Q. Under what firm name?

A. S. G. Hooker & Company.

Q. State what conversation, if any, you had with them or either of them in relation to trading with them.

A. I had talk with Mr. Hooker—I didn't know Mr. Lincoln then, think I never had seen him—and he says——

Q. Who says?

A. Mr. Hooker says, I am dealing pretty largely on the board of trade and I will speculate for you. Well, I said, I don't know. I thought I wouldn't do any more. I had enough with Mr. Adams; he drew on me for money. I can't take money out of the concern. I made up my mind I wouldn't deal any more. He said, I can make you some money. Well, I said, of course I would
161 like to make money. We all want to make money, but I don't want any more trading as I traded with Mr. Adams; and I said, I will not put up any margins; I don't want any grain; I wouldn't buy any grain; I haven't any money to go into the grain business, but if you can speculate for me and make some money I would like to have you do it; I will put up no margins. He said, You need not; I have large deals; have some people in Canada, some in Troy, some in Buffalo, and sometimes they give me large orders to buy; then he said, If the market is right I will

buy for you first, then go on these large orders and raise the market, and — I can sell them right I will buy for you first, then go on these large orders and raise the market, and I can sell them right out for you and make you some money. Well, I said, Remember I am to put up no margins; I don't want any grain; I wouldn't have any; have no money to buy grain with, but if I could speculate a little and make some money I will be very glad to do it.

Q. What was said, if anything, between you and Mr. Hooker at this time in relation to there being any grain delivered?

A. The understanding was, there was to be no grain delivered. He said he would buy this month for next month, and if the market didn't go to suit him he would change it off to another month.

162 Q. Did he say anything in relation to any grain being delivered or grain paid for—anything said by you about that?

A. I told him I wouldn't have any grain; wouldn't buy any grain. He never told me he had bought any for me.

Q. What was said, if anything, in relation to paying or receiving the difference in price of grain?

A. All I was to do——

Q. What were you to do? State it.

A. If I lost I was to pay it, and if I won anything they were to pay it to me. That is all there was said. Of course, I thought that would be right—if I lost anything I should pay for it.

Q. Where was that conversation?

A. At the Tremont house.

Q. Who was present?

A. Mr. Hook.

Q. George A. Hook?

A. Yes, sir.

Q. And Mr. Hooker?

A. Yes, sir.

Q. Anybody else?

A. No; I don't think it.

Q. You may state whether or not you ever gave any orders to buy any grain through S. G. Hooker & Company.

A. Never in the world.

Q. Did you ever give any orders at all to sell any grain or provision?

163 A. They might have sold. If they did they sold that I didn't have. They were to speculate for me. That is all I can tell you about it. They were to buy no grain for me—none to be delivered.

Q. When you say grain, do you mean provisions?

A. Yes, sir; provision—lard, or pork, or anything like that—wheat, oats, or corn. I think he said he had a large contract for corn and for lard, but I couldn't tell how much.

Q. In case you sold any grain or provision, state whether or not you were to make any delivery of it.

A. No. I was to make no delivery of anything.

Q. How was it to be settled up?

A. I don't know.

Q. What was the talk between you and Mr. Hooker?

A. He was to go on and buy and sell according to market and make some money on the fluctuations of the market.

Q. On the fluctuations of the market?

A. Yes, sir. They might have sold the same as they buy—on some two or three months; I don't know.

Q. State whether or not there was anything said about handling cash grain or provision.

A. I told them I wouldn't have any cash grain; no delivery at all; wouldn't deal in cash at all. Rather speculate in what
164 they call options, from one month to the other. Before the trade run out if it didn't suit them they were to change it over. I was to pay the difference or they me.

Q. What were you doing at this time?

A. Doing nothing. I was in business with Mr. Rice in the glass house.

Q. In the glass business, then?

A. Yes, sir.

Q. You were a partner with Mr. Rice?

A. I was; yes, sir.

Q. At that time what did you know, if anything, about the rules of the board of trade?

A. I didn't know anything about them at all.

Q. You say you had no knowledge in relation to them?

A. No knowledge.

Q. Had you ever been in the grain business at all?

A. No.

Q. Have you ever been?

A. Never in the world.

Q. Had you ever been on the board of trade?

A. No.

Q. Ever a member of the board of trade?

A. No.

Q. State when this conversation was about which you have testified at the Tremont house in the premises of Mr. Hook.

A. It was in 1874, I think.

Q. Had you ever done any business through S. G. Hooker
165 & Company before you had that conversation?

A. No.

Q. State the next conversation you had in relation to trading with Mr. Hooker, if any.

A. Mr. Hooker used to come over to the Tremont house most every day; generally take his lunch there; then I would talk with him, maybe every day, maybe every few days, about how the market was going, etc.

Q. Did you ever give any orders to buy or sell anything for you?

A. No; I didn't give any orders myself to buy or sell; he was to go on and speculate for me. I don't know whether it was buying or selling. I can't tell you now, it is so long ago.

Q. The first charge that appears to be made against you by S. G. Hooker & Company was on November 4th, 1874. You are charged to difference 115,000 bushels wheat, bought November, changed to December, $400. What do you know about that?

A. I don't know anything about it.

Q. Know nothing about it?

A. No. They were trading there for me. I couldn't tell anything about it.

Q. On February 1st, 1875, you are charged to difference and commission on 5,000 bushels of wheat, changed to April, $75. What do you know about that?

A. I don't know anything about it now. They might have
166 told me at the time. I can't tell.

Q. And on March 1st, 1875, you are charged to differences and commission on 5,000 bushels of wheat, $287.50. What do you know about that?

A. Don't know anything about it.

Q. Know nothing about it?

A. No.

Q. Did you ever have any different arrangement with S. G. Hooker & Company than that about which you have testified?

A. Not under a bargain with him.

Q. Now, in April, when S. G. Hooker & Company charged you with difference on 5,000 bushels of wheat, $18.75, what did you do about that?

A. Did nothing about it. I never saw their books.

Q. Never saw their books?

A. No; they never showed me anything. They might have charged anything they had a mind to. I couldn't tell.

Q. On May 31st, 1875, you are charged to differences 120,000 bushels wheat, $2,618. What do you know about that?

A. Don't know anything about it.

Q. And on the same day you are charged with differences on 30,000 bushels corn, $2,456. What do you know about that?

A. Nothing about it.

Q. On June 1st you are charged with differences 1,750 tierces June lard, $4,137. What do you know about that?

167 A. I know they said they were dealing in lard for me. That is all I know; in lard, corn, wheat. That is all I know, what they said.

Q. You say they were dealing for you. Under what arrangement were they dealing for you?

A. They were going on to buy and sell and settle on differences, whatever it might be, when they got through with the deal.

Q. On September 8th, 1875, you are charged to differences on 5,000 corn $706.25. What do you know about that?

A. Nothing about it.

Q. On September 30th to differences and commission on 10,000 bushels corn $200. What do you know about that?

A. I don't know anything about it. They never told me about these deals.

A. No.

Q. State whether any report was ever made to you by S. G. Hooker & Company of any actual sales or purchases of grain or provision.

A. I don't know of any.

Q. Never knew of any?

A. No.

Q. Did you ever have any business with S. G. Hooker & Company under any different arrangement than that made at the Tremont house in the presence of George A. Hook?

A. No.

172 Q. Did you ever have any conversation with Mr. Lincoln about doing any trading for you?

A. I don't know as I did with Mr. Lincoln particularly. My business was mostly with Mr. Hooker. He was there every day. I would go to the office often, and if I talked with Mr. Lincoln I don't remember now.

Q. Did you ever pay for any grain that was delivered?

A. No.

Q. Did you ever have any grain of any kind or provision?

A. Not that I know of.

Q. Was any ever delivered to you?

A. No.

Q. Did you have any use for any grain or provision during that time?

A. No; I never thought of anything like that.

Q. Were you in any business requiring any grain or provision?

A. None at all.

Q. Did you have any money with which to pay for any grain or provision?

A. No; I didn't have any, I told them.

Q. Did you in point of fact have any?

A. No. What there might be in the glass business I couldn't tell.

Q. You may now state what your intention was in trading on the board of trade in relation to receiving any article and paying

173 for it or delivering any particular article and collecting for it.

(Objected to by Mr. Thompson and Mr. Jackson.)

A. No object for anything like that.

Q. What was your object?

A. To speculate—to pay in the differences. I don't know what they did call it. *I don't know what they did call it.* I don't know much about it.

Q. Did they state whether or not it was called option trading?

(Objected to by *by* Mr. Thompson and Mr. Jackson.)

A. They said they would buy at option this month for next month. Before the time came around they would get out of the deal; merely to guess; nothing to be bought for me. You must get out of it before the delivery; always said that. I have no money to buy; I don't want anything.

Q. Did you owe S. G. Hooker & Company anything for any other purpose than for these speculative deals?

A. No.

Q. Have you got any account rendered to you by S. G. Hooker & Company?

A. I don't know; I had no account of anything except the bill they made out and took it back; but I think Mr. Rice took the bill when he settled up, and he has a suit on one of the notes before Judge McAllister, he said. I didn't see it.

Q. Do you know, as a matter of fact, what S. G. Hooker &
174 Company did with those four notes? If you do, state it briefly.

A. I don't know what they did with them, except I have been sued on them.

Q. State where they turned up.

A. D. K. Tenney sued on the first note.

Q. What about the other three—what became of them?

A. All I know about them is that the Third National Bank got two of them and Mr. Pearce has got the other, as he was the assignee of S. G. Hooker & Company.

Q. Are you the same Ira Foote that sued J. Irving Pearce for that $5,000 note?

A. Yes; I did.

Q. Are you the same Ira Foote that D. K. Tenney sued on one of those notes?

A. Yes; he sued them.

Q. On one of the notes?

A. Yes, sir.

175 JUNE 19TH, 1885.

GEORGE D. LINCOLN, being first duly sworn, testified on behalf of James H. Rice and Ira Foote as follows:

Q. What is your name?

A. George D. Lincoln.

Q. What is your age?

A. Fifty-eight.

Q. Occupation?

A. Grain-seller.

Q. Are you a member of the Chicago Board of Trade?

A. Yes, sir.

Q. How long have you been a member?

A. Since 1871.

Q. Were you in partnership with Stephen G. Hooker?

A. Yes, sir.

Q. How long?

A. Four or five years.

Q. Commencing when and ending when?

A. Commencing 1871 and ending 1876.

Q. About what time in 1876?

A. Some time in the summer of 1876—June or July, I think.

Q. The firm name was S. G. Hooker & Company, was it not?

A. Yes, sir.
Q. All the time you were in partnership?
A. Yes, sir.
Q. Any other partner but yourself?
176 A. None at the time; not in 1874, 1875, and 1876.
Q. What was the business of S. G. Hooker & Company?
A. Commission business.
Q. Where did they do their business?
A. On the board of trade.
Q. Did they keep the usual books kept by commission-houses on the board of trade in the city of Chicago?
A. Yes, sir.
Q. Did they keep an option or grain ledger?
A. No.
Q. What did they keep?
A. An option book.
Q. In the option book, so called, were all the trades made by the firm of S. G. Hooker & Company?
A. Yes, sir.
Q. And did that book show how they were settled up?
A. Yes, sir.
Q. Were most of the trades made by S. G. Hooker & Company settled directly or what is called rung up on the board of trade?

(Objected to by Mr. Thompson and Mr. Jackson.)

A. Of course, I could not say positively, but there is no doubt it was settled both ways.
Q. You may state how the trades made by S. G. Hooker & Company on the Chicago Board of Trade were generally disposed of.
A. The usual way there on the board of trade of ringing
177 up the trades, some would be direct, some would be rung up, some had to wait to be delivered on the first of the month.
Q. What proportion of them were delivered?
A. I couldn't tell you.
Q. Give us a judgment—a guess.
A. I wouldn't want to guess.
Q. Was one in 100?
A. Yes; probably more than that, because there were times when we were taking all in cash.
Q. When you were running a corner?
A. Yes, sir.
Q. Only happened when you were running a corner?
A. Yes; often had to be delivered.
Q. Where is the option book kept of S. G. Hooker & Company during the years 1875—1875 and up to the time the firm quit, in 1876?
A. I haven't been able to find it yet.
Q. What did S. G. Hooker & Company do with that book?
A. I supposed all the books were transferred to Mr. Pearce.
Q. Why were the books transferred to Mr. Pearce?
A. He was the assignee of S. G. Hooker & Company.

Q. When was the assignment made to him?

A. I think early in 1877—February 28th, 1877.

Q. Did this option book, so called, pass to J. Irving Pearce when the assignment was made?

A. I don't know. I supposed the books all went there; that is all I know.

178 Q. Have you any knowledge of what has become of the book?

A. I have not. I haven't seen it for years.

Q. Where is the ledger and journals that were kept?

A. They are with Mr. Pearce.

Q. He has them now?

A. Yes.

Q. When you speak of a direct settlement being made, do you mean that if you sell grain for one man, for one customer, and buy of the same man for another customer you settle up—that is, the direct?

A. Yes; a direct settlement.

Q. And it goes off your books immediately, does it?

A. Yes; immediately.

Q. Now, explain what you mean by ringing up a deal on the board of trade.

A. We have grain bought of John Smith and sell to John Brown, probably not the same man we bought this from, but some other customer, but we find this man has sold to such a man, and when it rings around we pay whatever we are owing or collect whatever owes us, and it settles those two deals for the time being, not as far as our customer is concerned, but as far as we are connected with the parties we have sold to. Perhaps the parties have not sold their grain or bought it in. If this man sells, it goes over on this page.

179 It is open as far as the books are concerned. When this man buys his in we have this open in the place of that one for that man, and we have this deal open in the place of this one, so there is a purchase or sale still open on the books, but not the original purchase and sale for the parties.

Q. Then when you ring up there is no delivery?

A. No.

Q. You settle with each other by the payment of the difference, don't you?

A. Yes, sir.

Q. And just so the direct settlement; no delivery?

A. No.

Q. There is a payment of the difference each way?

A. Yes. Then when we strike a man that we can't ring we have to wait then until delivery.

Q. Then if you rung up a trade made to-day and rung up to-morrow you have got no wheat sold for the customer?

A. Yes; we have it sold to this man.

Q. But if you have rung it up there is an end of it with the man you bought it of?

A. Yes; this other man stands in the place of that one.

Q. Which other man?
A. The man we have this sold for.
Q. You mean another customer?
A. Yes, sir.
Q. You have an order for one customer to buy and another order from another customer to sell, and you have filled both of those orders for some month, but have settled the purchase and
180 the sale on the board of trade?
A. Yes, sir.
Q. And have no wheat sold to that customer nor none bought on the board of trade?
A. No, sir; we have these——
Q. On the board of trade the deals are settled off and the differences are collected by you or paid out by you, and there the matter stands until one of these customers of yours gives you an order?
A. Gives an order to close out.

Examination adjourned, to be taken up on notice of complainant's solicitor.

181 JUNE 26TH, 1885.

IRA FOOTE, recalled for cross-examination by Mr. THOMPSON, solicitor for J. Irving Pearce:

Q. Have you been in good health for the past few years?
A. Yes; until two years ago. I had paralysis two years ago this June. Other ways I had pretty good health. Since then I have not been in very good health.
Q. Do you find that your memory is impaired by your ill health?
A. I don't think I can think as quick as I could.
Q. How often were you in the office of S. G. Hooker & Company after you talked with them about speculating for you?
A. Sometimes I would be in there every day; sometimes would not be in there for two or three days; just as I happened to feel. If they had any trades with me or any deals I would go in there oftener. If they had not I would not go in so often.
Q. When you saw Mr. Hooker and talked with him, do you recollect what was said at those conversations?
A. What ones do you mean?
Q. You have said that you saw Mr. Hooker, maybe, every day.
A. I did; yes; most every day. He took his lunch at the
182 Tremont house, and that is where I boarded.
Q. Do you remember your conversations with Mr. Hooker at these times?
A. Yes, sir; I will never forget that.
Q. I mean at the times when you say you saw him from day to day.
A. No; I couldn't tell; would ask him how the market was and so on.
Q. When he told you how the market was, did you not tell him whether to buy or to sell?

A. I didn't want to buy anything and I wouldn't sell anything. I had no money to buy or to sell. He called it speculating. I told him I would like to make some money. He said he could make some for me. He had big deals for men in Canada and in Buffalo and men in Troy, and I think he said some in New York. He had to buy for them; didn't speculate, really trade; but he says, Here, you want to trade in this way, trade in options, but this month for the next month, and sell before the delivery. That is all I told him: I must get out of the trade before the delivery. I wouldn't have anything.

Q. I am asking about the conversations with Mr. Hooker when you met him from time to time. Did you not then talk about whether you wanted him to buy grain or sell grain?

A. No; I told him always that they were to buy nothing for me—nothing.

Q. But you knew that he was buying for you, didn't you?

183 A. Trading in what he called options, option dealing, and get out of the trades before the delivery.

Q. He was to buy grain to be delivered, say next month, and then was to sell the grain before the time came for delivery?

A. Yes, sir. I couldn't buy anything at all.

Q. But you knew when he had bought grain for you, didn't you?

A. Sometimes he would tell me he bought so much, either corn or wheat or lard or something, and, says he, I am going to make some money out of it. Well, said I, I hope so.

Q. And he would sometimes tell you that he had sold for you the grain that he had bought?

A. I couldn't say whether he told me that he had sold the things or not—that is, as a general thing; he might have told me. I couldn't say about that. I think he told me he had sold some of it; I know he had; but how much I can't tell. I didn't dictate the deals at all.

Q. How often during that time did you see Mr. Lincoln?

A. Well, if I went in the office I always saw him; if I didn't, I didn't see him.

Q. But how often did you go into the office?

A. Sometimes in there every day; sometimes maybe once in two or three days, owing to whether he had deals with me or for me.

184 Q. When Mr. Hooker or Mr. Lincoln told you that grain was low, did you not then direct them to buy grain for you?

A. I never directed the deals at all. I would say, in an ironical way sometimes, when it was way up or way down, to buy two or three hundred bushels—in a laughing way, you understand; but I never pretended to dictate any trades at all; they run it to suit themselves.

Q. You trusted to their judgment?

A. They said they were making me money.

Q. They did make some money, didn't they?

A. They did on the start; made $2,000 for me; then they commenced losing, and I don't know as they ever won anything after

that; I don't know. I used to ask him about the deals, how much I was owing them, and I think the time I told him to stop dealing any more he looked at a little memorandum book, that he took out of his pocket, to reckon up how much I was losing; he said some $10,000. I said, I don't want any more; I must quit; I have no money for this thing; must try and settle it up some way. I have some real estate, and I want you to take that. I will get the abstracts of title and you must inquire about it. I want to go away. Mr. Lincoln took the abstracts of title, I think.

Q. Did you not receive from Mr. Hooker or Mr. Lincoln or Mr. Norton, from time to time, memoranda of sales or state-
185 ments of sales?

A. Never received any. Once I was sick in my room, and they had a man they called Geltmacher. He came and said they sold some property for me just as it commenced going up, and I didn't like it very well. I said, Why didn't they wait till they could make something for me? Well, he said, they sold your property out; it is going up; and it went up, and in the afternoon he came. It has gone up three or four cents, and he came back and said, They will buy it in for you now. Said I, Why didn't they keep it when they had it? not go and buy it again, said I; that is a poor was of using a man that is sick and can't go out.

Q. You don't know the name of this man, do you?

A. Geltmacher, I think, they called him. He was not there when I commenced trading with them. I understand his name is Geltmacher.

Q. He was in the office of S. G. Hooker & Company at that time?

A. Yes, but not when I went to trading with them. I guess it must have been six months or a year before I saw him. I know he came and told me they had sold out my deals there, and I said, Why didn't they hold it till it got worth something? It went up, and I think would have made me several thousand dollars, and
186 then they came in the afternoon, when it got way beyond, and wanted to buy it in for me. I said, No; I don't want any such thing. I was very much dissatisfied with that. I don't know where Geltmacher is now. He would remember about it.

Q. Don't you recollect of being notified when other sales or purchases were made?

A. Mr. Hooker must have told me when he made sales or purchasers, but I can't tell you any particular one. I think I knew, by what they said, what they were doing; I don't know.

Q. But don't you recollect receiving a statement showing purchases and sales from time to time?

A. No; they didn't make any bills to me of anything;

Q. Might they not have handed you such a statement?

A. They never handed me a statement at all of any writing—none whatever. I don't remember. I wanted to get out of it. I was sick, and I wanted to know about how much I had lost, and he looked at his memorandum book he carried in his pocket. I didn't see the figures, but he said about $10,000—between $10,000 and $11,000. Well, I said, I must stop now; I can't go any further; I

want to get out of it; must settle it up. I think this must have been in April, and I wanted to go. I gave them my prop-
187 erty. I had some South there, and I wanted them to take that, and if that was not enough I would try and raise the money to settle it up. Mr. Lincoln asked me, after he had the deeds of the property, How much did you pay for that? and I told him I didn't remember. Well, he said, I have been talking with some real-estate men, and I think I can get you out of it—something to that effect. Well, said I, let me out of it as soon as I can.

Q. How long was that before you settled up the account?

A. I think that was in April; didn't settle. They made out a bill about in April. I think it was for $19,000, and Mr. Lincoln gave it to me there at the Palmer house, and I saw it was $19,000. That is the only bill I ever received, and I said, What is this? There is something wrong about it; there is only about $10,000. I said, You have here ½ a cent a bushel. He agreed to do it for me at half what he does for anybody else, which would be one-fourth. Mr. Lincoln said, I don't know what bargain Mr. Hooker made with you. I charged you just the same as anybody else. I said, Take it back and see Mr. Hooker about it and fix it up, and he said he would, and I went to the office next morning. Mr. Hooker sat at one side of the table & Mr. Lincoln at the other, and I said: Mr. Hooker, was not my bargain with you for ¼ cent, just ½ what
188 you charge others? He said, Yes. Mr. Lincoln was smoking. He always was smoking. I never saw him do anything else or say anything. He was always smoking. Well, he said, I don't know what your bargain was. Well, I said, boys, let me out of this, and settle it up as soon as you can. It ran along till the very last of May, and they didn't give me my bill. They said they were fixing it up. Finally I heard that Mr. Hooker and his wife had gone East about the last of May. I didn't know they were going, and supposed they would be back about the first of July, and I said to Mr. Rice, Will you please just settle this matter up for me? They took the bill back, and I suppose it is $10,000 or $11,000, and I will give you power of attorney. He didn't like to do it, but he knew I was sick, and he said he would do it, so I gave him power of attorney and Mr. Rice settled it up with them.

Q. Have you ever seen one of those notes of the Couch estate—the one that was held at one time by Mr. Tenney?

A. I saw that. That is the only one I ever saw. I had that one.

Q. You received that from Mr. Tenney?

A. Yes, sir.

Q. What did you do with that note?

A. I gave that to Mrs. Hooker?

Q. The wife of S. G. Hooker?

189 A. Yes, sir. I was going East again, and I didn't know what might happen, and I gave her that note—that is, I didn't give it to her; I put it in the hands of Mr. Wood in trust for her.

Q. At what time was that?

A. I don't know. Shortly after I got it of Mr. Tenney. She

didn't know that I left it there, Mrs. Hooker didn't. I left it in trust. I said, You can notify her of it, if you please, and he was to pay it, and he drew up a statement and has it now. I left it there in that shape in case I could not get back. I think you can get that statement from Mr. Wood.

Cross-examination by Col. JACKSON:

Q. Who settled with the firm of S. G. Hooker & Company?
A. Mr. Rice did. I gave him power of attorney.
Q. Who has that power of attorney?
A. I don't know; know nothing about it.
Q. What kind of a power of attorney was it?
A. I don't know. Mr. Kretsinger drew it up and I signed it.
Q. When was this settlement made?
A. It was made, I think, in 1876, about the last day of June or the first of July.
Q. Did S. G. Hooker & Company present you an account of your indebtedness to them?
A. They did, as I told you, that $19,000, but they took that back.
Q. Where is that account now?
190 A. I can't tell you anything about it. I went away and left the things with Mr. Rice. He said they came to the office after they heard that I had gone away. They said I had run away, and they gave him a good deal of trouble, and he took his power of attorney. I suppose he settled it some way.
Q. You saw this account, did you not?
A. I saw the one of $19,000 only.
Q. What has become of that?
A. I don't know. I gave it to Mr. Lincoln to take back and fix it up so I could settle.
Q. What was done with it after that?
A. I don't know; I was gone; I didn't get home till September.
Q. When did you give it to Mr. Lincoln?
A. At the Palmer house.
Q. What year?
A. It was in 1876.
Q. Do you know whether Mr. Rice has that account now?
A. I don't know; I never have asked him about it; I suppose he must have it or it is in the court somewhere. It was there.

Col. Jackson, counsel for Third National Bank, notifies the attorney on the other side that he wishes the account referred to produced.

By the WITNESS: When I got East Mr. Rice telegraphed me and said, Your account there is between two and three thousand
191 dollars. This was, I think, on Saturday I got it. I thought it would be less; instead of that it was more. I couldn't think what I said. I telegraphed him at the Tremont house. I supposed he would get the telegram Sunday morning. It came there, but they put it in a pigeon-hole and forgot to give it to him, and he didn't give it to him till along towards the last of the week, and

he said they were bothering him so that he was obliged to settle it and I could come home. I told him I would come at once if it was necessary, but he said, I can settle it up and you can take any advantage you wish when you get back.

Q. Prior to the time when this account was handed to you by S. G. Hooker & Company had you ever received from them any funds profits of any sales?

A. I think I must have received $2,000 or more.

Q. That was prior to the time of this account?

A. Yes; I think that was in 1875.

Q. What was that sum paid to you for?

A. He said I had made so much.

Q. Who said so?

A. There in the office; Mr. Hooker, I guess.

Q. Did any one else ever tell you you had made any money there?

A. I don't know. The men in the office of Mr. Hooker I don't know.

Q. How many different times was this money paid to you by S. G. Hooker & Company?

A. I don't know anything about the time business.

192 Q. How many different times, in how many different sums?

A. I can't tell you anything about it. I am satisfied, as near as I can tell, I must have got $2,000 or more; maybe less. They said they had made that for me. They didn't show me the deals, as I know of.

Q. Did you ever receive any such money from them after this account was handed you?

A. No.

Q. Then the only sum you ever received from them was about $2,000?

A. I think it was about $2,000; maybe a little more, maybe a little less.

Q. We gave the notes of the Couch estate to S. G. Hooker & Company?

A. I suppose Mr. Rice did. I know he did, because he is the only man that had the power to do it for me.

Q. He gave them to S. G. Hooker & Company in settlement of this indebtedness?

A. Yes, sir.

Q. You were indebted to S. G. Hooker & Company for a certain sum of money?

A. $20,000 or something.

Q. And the notes were given by Mr. Rice to S. G. Hooker & Company for that purpose?

A. Yes, I think so.

Q. Did you at that time give any money to S. G. Hooker & Company?

193 A. I think Mr. Rice said he gave them the notes of the Couch estate, amounting to $20,000, and $2,000 more in money—a check, he said.

Q. Then that settled your indebtedness to S. G. Hooker & Company, did it not?

A. Yes, sir.

Q. Prior to that settlement had there been any other attempts to make a settlement?

A. No; I hadn't settled any accounts.

Q. You offered at one time to turn out some real estate, did you not?

A. Yes; I wanted to settle it up; I think they gave me a bill.

Q. Where is that bill?

A. I couldn't tell you whether they brought it back or whether I gave it to Mr. Rice, or where it is; they took it, I know, to correct, that is all I can tell, and I went around the next morning to have it fixed up, and Mr. Hooker said, Yes, that is my agreement with you, one-half what I charge anybody else.

Q. Did you ever at any time give your own note to S. G. Hooker & Company?

A. Yes, sir.

Q. When was that?

A. I- must have been in 1876; I think in the early part of it.

Q. Was that before or after the settlement?

A. Before the settlement.

Q. How long before the settlement?

194 A. I think this must have been along in the winter before the settlement which was in May, but I can't tell you about what time.

Q. What was the amount of that note?

A. I think, $15,000.

Q. What did you give it to them for?

A. Mr. Hooker came to me at the Tremont house. He said, We are getting in a little tight place—in a little hot water—and said, Mr. Lincoln wants to know if you won't give me your note so I can put it up as collateral for money. They are crowding us on our deals. We have some big deals, and they don't want to give them up. He said, If you will go and see Mr. Lincoln and give him your note we would — to have you do it, because if they crowd us too hard we will put your note up as collateral to draw money. Well, I said, I don't want to do that, but, of course, I would help you if I can, and so I went to the office in the evening. Mr. Hooker was telling me he went home after business hours, and Mr. Lincoln was there and Mr. Geltmacher was there, and Mr. Lincoln told me what he wanted, and I said, Mr. Lincoln, I don't like to do this, but I will do it, if it is really necessary, for you. Well, he said, I don't do it because you are owing us, but as a favor, and said, If we don't want to use it it shall go into the safe. Mr. Geltmacher wrote the check. I think it was $15,000, and I signed it.

Q. When was that note made payable?

195 A. I can't tell whether it was 60 days or 90 days from the time. They said the people they were dealing for were a little behind on margins, and they had a big deal on hand, and I

think he said mostly corn, and they wanted I should help them if I could.

Q. What did they do with the note?

A. I don't know.

Q. Do you know whether they discounted it?

A. No.

Q. Don't know anything about it?

A. Nothing about it. I told Mr. Rice that amount was there when I left. I didn't make any memorandum of the note.

Q. When the indebtedness to S. G. Hooker and Company was settled what became of that note?

A. Mr. Rice took it up, he says. I didn't see it.

Q. I want to ask you again why these var-ous sums of money were paid to you that S. G. Hooker & Company paid you—how was it?

A. When they first commenced, I think, they paid me money that they said they had made for me, twice, I think, or three times, and I think one of them was $1,000, but I can't tell you; my impression is now he paid me once $1,000.

Q. Did they pay you any more?

A. I think they paid me—there must have been about $2,000, but I can't say.

Q. Was James H. Rice your partner?

A. We were in building, and after we got through build-
196 ing he went into the glass business. I was with him in that for a year or two till I got dealing with the board of trade and got out of business and had to leave; my money was in there at the time.

Q. Did you know that S. G. Hooker & Company were dealing with other parties for you?

A. No; I didn't know anything about it.

Q. You knew they had to buy something, didn't you?

A. They were dealing, they said, at options for me.

Q. You knew they must buy something if they bought any wheat or grain, as you say?

A. The understanding with me was they were to buy nothing for me.

Q. Didn't they have to deal with somebody?

A. I don't know.

Q. Don't you know they must have dealt with somebody?

A. I might have known; I don't know anything about it.

Q. If they bought anything they would have to buy of somebody, wouldn't they?

A. If they bought anything.

Q. If they sold anything——

A. They might have bought something for themselves, and if it didn't suit them they would turn it over to me; I don't know.

Q. If they sold they would have — sell to somebody, wouldn't they?

A. I don't know their way of doing business.

Q. You were in there nearly every day?

A. I was some of the time.

Q. How long a time did these transactions cover?

197 A. I think they commenced in 1875; maybe in 1874.

Q. Did you stop some time in 1876?

A. Yes, sir; in 1876.

Q. Did you go into their office 100 times during that period.

A. Yes; I presume so.

Q. More than 100?

A. I might have been.

Q. Were you pretty familiar with the dealings on the board of trade?

A. Didn't know anything about it; never was on it.

Q. Were you familiar with the proceedings on the board of trade then?

A. No; I never knew the board of trade business. I supposed I was going to make money, but I lost.

Q. How long a time did you spend in their office when you were there?

A. Went in there every day; maybe twice a day.

Q. How long a time did you stop there?

A. Maybe there half an hour.

Q. Sometimes longer?

A. Yes, sir; I couldn't say.

Q. Where was their office?

A. On Randolph street; I don't remember the number; just a little way from La Salle street.

Q. A block from the board of trade?

A. Yes; I think so.

198 Q. How many accounts were ever presented to you by S. G. Hooker & Company?

A. Only one.

Q. That is, only one account was ever presented?

A. One of $19,000.

Q. Did you examine that account?

A. I didn't look it through. At the entrance of the Palmer house he handed it to me. I looked to see the amount it was. I expected about $10,000, and I saw it was $19,000.

Q. Did you know they had paid out any money for storage?

A. No; they never notified me of any such thing.

Q. Did you ever know they paid any money for insurance?

A. No; never heard of any.

Q. Know they paid anything for brokerage or commission?

A. No.

Q. Did you know they ever paid any money for Mrs. Hooker?

A. I don't remember anything about Mrs. Hooker's money. I see they had charged me, I think, $25, paying her. I might have told them to pay her; that I don't remember.

Q. Did you know they paid any money for Mr. Norton?

A. No.

Q. What did they buy for you?

A. I can't tell you what they bought; they were trading
199 there for me in corn, wheat, lard, and pork, they said, and such things.

Q. Buying oats for you?

A. I don't remember of any being purchased. Mr. Adams purchased some for me.

Q. Did they ever tell you they paid out any money on your account for you?

A. No; I don't know as they did any money for my account. They were dealing for me, and if they lost on my account they must have paid money.

Q. What became of that injunction suit which you say was instituted by Mr. Kretsinger?

A. That was before Judge Moore. I don't know any more.

Q. It was dismissed, was it not?

A. I don't know. I understood after the suit had been commenced a certain time they dismissed them from the docket; they were not called up.

Q. You have never heard of it from that time to this?

A. Yes; I heard it was dismissed, and he told me. I can't tell you who it was. He was a lawyer of mine. I don't know.

Q. Was anything ever done under that suit? Did you prosecute it to a final hearing?

A. I don't know. Mr. Kretzinger was my attorney, and I got dissatisfied with him, and I got another lawyer. I forget who he was and what he did. I don't know but it was Mr. Bisbee. When I got back I went to Mr. Kretsinger, and he said, These deals with you on the board of trade are all fraud.

Q. Who said this?

A. Mr. Kretsinger. He said they were all fraud. I said, What
200 is that? and he said they would have to be decided by the courts. I said, I don't understand it. He advised me to enjoin them from collecting the notes, and I told him to do so.

Q. This money that you say S. G. Hooker & Company paid to you. Did you ever pay it back to them?

A. No; I never paid them anything back.

Q. You kept the $2,000?

A. $2,000 odd dollars Mr. Rice paid for me. He charged to them when he settled up with them.

Q. I mean the money that S. G. Hooker & Company paid to you at various times, amounting to $2,000. Did you return it to them?

A. No.

Q. You kept the money?

A. Yes; of course I did.

Q. Did you ever have any conversation with Mr. Lincoln with reference to your business with S. G. Hooker & Company?

A. In what way?

Q. As to your arrangement with your deals?

A. Never had any arrangement until this time.

Q. What did you say to Mr. Lincoln? Did you say anything?

A. I told him Mr. Hooker agreed to do it for half what they were doing it for others.

Q. With reference to the commissions?

A. Yes; and he said he didn't know what my arrangement was with Mr. Hooker. He supposed it was the same as with other parties, and he would see Mr. Hooker, and if that was so he
201 would correct the bill, and I went down the next morning and I asked Mr. Hooker, Didn't you agree to do business for me for one-half what you charged others? and he said yes.

Q. Did you ever tell Mr. Lincoln how you wanted to buy and sell?

A. I made the arrangement with Mr. Hooker that he was to trade for me, but not to buy anything.

Q. Did you ever tell Mr. Lincoln about that?

A. I don't know as I said anything to him; I don't know but I did, and I don't know as I did.

Q. You don't recollect about that?

A. No; I don't recollect about it.

Q. Did you ever tell Mr. Norton what arrangements you had made?

A. He wouldn't swear to that here.

Q. Swear to what?

A. Swear that I told him so; he says I didn't.

Q. Mr. Norton said that you didn't tell him?

A. I said, Mr. Norton, you know my bargain with Mr. Hooker is not to buy any grain for me, for I have no place to put it, but to buy and get out of the trade before the delivery was to be made or had to be made. He said, I understand it, and Mr. Hooper was present, and he said, Yes, that is my bargain with Mr. Foote, Jim. He knew it. I know they asked him if he knew there was any difference in my trades, and he said, No.

Q. Mr. Norton denies that?

202 A. He did in that way; yes, sir. He said he didn't know any difference.

Q. Mr. Norton has sworn, has he not, that he had no such conversation with you?

A. I don't know whether he has or not.

Q. I thought you just stated he said he did not?

A. He said it in court he didn't know the difference with my deals and with anybody else's.

Q. Did you ever have any conversation with Mr. Geltmacher?

A. No; no conversation with him. He was not there when I commenced at all. I don't know what he was doing there. He came to see me once or twice.

Q. You never told Mr. Geltmacher anything about what your arrangement was?

A. I don't know as I did, but I did Mr. Norton. I did before Mr. Hooker, too.

Q. You can't tell whether you told Mr. Lincoln or not?

A. They were all there in the office—Mr. Lincoln, Mr. Geltmacher, and Mr. Hooker and Mr. Norton—and knew they were

dealing for me, not to buy anything, but in a speculating way; that is all. They all knew that.

Q. Did Mr. Geltmacher ever call upon you for margins?

A. No; never.

Q. Did any member of the firm of S. G. Hooker & Company ever call upon you for margins?

A. No; never.

203 Q. At no time?

A. I told them at the time that I wouldn't put up any margins.

Q. Did you ever put up any margins?

A. No; never.

Q. Did Mr. Geltmacher ever tell you they had brought some coin for you?

A. No; I don't think it. I don't know.

Q. You don't recollect?

A. I don't think he did; it might have been. I don't say he didn't; don't remember that particularly. I know he came over to my room and said they had sold my deals out the early part of the morning. They had a cur-ous way—they would be way down and then way up, and they run up; and I said, Why didn't you wait and get something for it. He said, We thought we better sell it. In the afternoon it run way up, and there must have been $4,000 or $5,000 in my favor, and then they wanted to buy it again, and I said, That is a pretty way of doing business; don't do any more like that for me or I will throw you out of the window.

Q. When did you have this conversation with Mr. Geltmacher?

A. When he came to tell me about this.

Q. What month?

A. I can't tell.

Q. What year?

204 A. I think in 1876 or 1875. I can't tell; must have been 1876, towards the last of the year. I was sick and wanted to go away, and told them not to sell any more at that time.

Q. When you say that S. G. Hooker & Company were not to buy anything for you you mean they were not to have anything delivered, was that it?

A. Get out of the deal before the delivery.

Q. They were not to deliver anything?

A. Not to deliver anything to me. They never did that I know of.

Redirect examination:

Q. You have spoken about an account which was rendered you and you took the same back to Mr. Lincoln to be corrected?

A. He took it back at the time that he gave it to me. He handed it to me at the Palmer house in the hall.

Q. Since he took it back have you ever seen it?

A. I have not.

Q. Never saw it but that one time, did you?

A. No; that is all.

Q. Never have seen it from that day to this?

A. No.

Q. You have spoken about a note for $15,000. I will ask you if that note was given in payment of anything you owed them.

A. No.

Q. State what it was given for.

A. They said they had some heavy deals and they were
205 crowding for margins, and it might be they would want me to help them out. Mr. Lincoln said at the time, I know there is so such amount due us, but I want you to help us out if you can; that is all; and he said, If I don't have to draw the money on it it shall be there in the safe.

By Col. JACKSON: Do you know whether Mr. Lincoln gave that account to Mr. Rice?

A. I don't know anything about it. I think Mr. Rice said he took up this note that I had given them when he settled up with them, but what became of the account I can't say.

Cross-examination of Mr. George D. Lincoln waived.

By agreement of counsel the signatures of witnesses on both sides waived.

206 JUNE 26TH, 1885.

STEPHEN G. HOOKER, being first duly sworn, testified on behalf of James H. Rice and Ira Foote as follows:

Q. What is your full name?

A. Stephen J. Hooker.

Q. Where do you reside?

A. Chicago.

Q. How long have you resided in Chicago?

A. Thirty-six years.

Q. Where did you reside previous to that?

A. Buffalo, New York.

Q. In what business were you engaged when you first came to Chicago?

A. Building business.

Q. How long did you continue in the building business?

A. Up to 1856.

Q. What did you then go to doing, if anything?

A. I went into the grain business.

Q. In what capacity and in what place?

A. I traveled for two years for grain-houses here.

Q. Then what did you do?

A. Went into business for myself.

Q. In the commission business?

A. Commission business.

Q. On the Chicago Board of Trade?

A. Yes, sir.

Q. How long did you continue in the commission business?

A. About 26 or 27 years; that is my recollection.

207 Q. Did you ever form a copartnership with George D. Lincoln?

A. Yes, sir; verbal copartnership.
Q. When did you form that copartnership?
A. The spring after the fire.
Q. Spring of 1872?
A. 1872.
Q. And it continued how long?
A. Up to the fall of 1876 or spring of 1877, I forget which.
Q. Did you continue up to the time the firm made an assignment to J. Irving Pearce?
A. Yes, sir.
Q. Anybody else a member of that firm?
A. Mr. Lincoln had a third interest the first six or eight months of his connection with me.
Q. When did you first know Ira Foote, who has just testified in this cause?
A. In 1849 he came West to me. I sent for him as a builder.
Q. As a builder?
A. Yes, sir; I wrote for him to come.
Q. You knew him previous to that time?
A. No; only by reputation.
Q. Have you known him since that time?
A. Very intimately.
Q. From 1849 to the present time?
A. Yes, sir.
Q. What was Mr. Foote's business?
A. A builder—carpenter.
Q. Has he ever engaged in any other business, to your knowledge?
208 A. Not to my knowledge. He was connected with Mr. Rice in the glass trade here for awhile.
Q. James H. Rice?
A. James H. Rice.
Q. When did you first have any knowledge that Mr. Foote had done any speculating on the board of trade in Chicago?
A. He and Mr. Rice came to me one morning and said that Mr. Foote had been speculating through a member of the board of trade on oats and wanted me go with Mr. Rice and help settle the account.
Q. Who was that person?
A. The gentleman he swore to.
Q. Mr. Adams, was it?
A. Mr. Adams was his name. I forget his given name.
Q. Can you tell what year that was?
A. I think it was in 1874 or 1873.
Q. What did Mr. Foote say to you in relation to that matter?
A. He said he had been speculating in oats through Mr. Adams, and Mr. Adams had been carrying a large amount of oats in cash unbeknown to him, without his consent, and had him charged with a large account for carrying it.

It is understood that all testimony taken in this cause goes in sub-

ject to such objections as counsel on either side may desire to make, and precisely the same as if made in the proper time and in apt words.

209 Q. You may go on and state what else Mr. Foote said to you in reference to his trading through Mr. Adams.

A. He said he was very much dissatisfied with the management of the property and with the expense that had been shown him of carrying this property—cash, interest, storage, and insurance—and had finally shipped the oats out of Chicago to New York unbeknown to him, with which he was very much dissatisfied, and wanted Mr. Rice and myself to go to Mr. Adams and settle up the matter in some way and get him out of it, which we did.

Q. At that time did you have any conversations with Mr. Foote in relation to trading with him yourself?

A. Not at all at that time.

Q. Did you subsequently to that time?

A. Yes, sir.

Q. About when was the first?

A. After he settled with Mr. Adams he and I were talking about this matter with Mr. Adams.

Q. Where was that?

A. At the Tremont house.

Q. When was it?

A. Perhaps a month after I had the interview with Mr. Adams—Mr. Rice and I.

Q. Who was present?

A. Mr. Foote and Mr. Hook, histime-keeper.

Q. You may go on and state what was said between you and Mr. Foote at that conversation.

210 A. Mr. Foote was talking about this matter, and about speculating on 'change. I was dealing largely in corn for Canada parties, and he had heard that I was dealing in corn. He said, Steve, I want to make some more trades on 'change, and I want to do it through you. If I had money you would not have taken it from me. I would have traded with you, but Mr. Adams was boarding at the Tremont house, and I traded with him. Said I, You have no business as a trader on 'change. You don't know anything about it. Said he, I am bound to make some money. Mr. Adams would have made a large amount of money if he had done as I had told him to. I want to trade there some more. I said, Trade with somebody you know. Said he, That is the reason I want to trade with you. I want to trade without carrying any property, exclusively in options. I don't want to pay for any. Said I, Mr. Foote, seven-eighths of all the business done is in options. We never design to take any property as a rule. That is not the design of speculative trades on 'change. The design is to run at options, to make a profit or loss during the life of the contract. Said I, We can do that if you want to, but my advice is, keep away from the board of trade. You don't understand it, and it takes a good deal

of management to make money there. Said he, You are
211 trading, and you can join my purchase with your Canada parties and make me some money. Said I, It is possible. I will do the best I can for you, and then and there promised him that I would trade for him exclusively in options, without any intention of violating a law, but as it was the uniform custom I made that agreement.

Q. State what you mean by options.

A. I would buy 10,000 or 20,000 bushels of corn, December, January, or February, and before the contract matured I would sell that property out to the best advantage and charge it to him, debit or credit.

Q. Charge what?

A. The profit or loss.

Q. What did you call that profit or loss?

A. I called it a profit or loss on an option transaction.

Q. How did you charge it—under what name?

A. In differences.

Q. And what constituted the differences that were charged to Mr. Foote?

A. If we sold the corn at two cents a bushel lower than we bought it, it was a difference, a loss; if we sold it at one cent higher than the price we bought, it was a profit, difference of a profit between the purchase and the sale.

Q. What conversation did you have with Mr. Foote in relation to any trade you might make for him going to a delivery or standing until it matured?

212 A. Implicitly understood that no property should be taken in and paid for and carrying expenses charged.

Q. And what were you to do, if anything, in all trades before the maturity of the contract?

A. Sell them—sell the property.

Q. Or buy it?

A. Or buy it.

Q. And were those purchasers or sales to be made before the contract matured?

A. Yes, sir; purchase or sale, whatever might be the market, was to be made before the contract matured?

Q. What did Mr. Foote say to you, if anything, in relation to not having money or means with which to carry grain?

A. That was one of the considerations on which I made this arrangement. He had no money, outside of his business, to carry property, and he had just enough experience to learn that it was no way to do, so that he wanted to trade exclusively in options.

Q. State what Mr. Foote'- experience or knowledge of the manner of trading was at that time.

A. I don't think he had any experience, except what he had learned from Mr. Adams and what I had told him; don't think he knew anything about it, any more than a child.

Q. And from your acquaintance and intimacy with him would you have been likely to have known it if he had?

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Q. State what Mr. Foote's experience or knowledge of the manner of trading was at that time.

A. I don't think he had any experience, except what he had learned from Mr. Adams and what I had told him; don't think he knew anything about it, any more than a child.

Q. And from your acquaintance and intimacy with him would you have been likely to have known it if he had?

213 A. I had always been associated with him, intimately, ever since he came West. He lived in my family for 7 years. I knew him pretty well.

Q. Did you do any business for Mr. Foote pursuant to that understanding had at the Tremont house in presence of Mr. Hook?

A. No board of trade business—no speculative business on the board of trade.

Q. What did you do?

A. I had building trades transactions.

Q. Did you do any business for Mr. Foote after this conversation; do any speculating for him on the board of trade?

A. Yes, sir.

Q. What did you do?

A. We bought corn, wheat, & lard.

Q. Were any orders given for the purchase of any corn, wheat, lard, or pork?

A. Not as a rule. It was all left to me to buy it when I thought best and to sell when I thought best.

Q. Now, go on and give the history of what you did, as nearly as you can.

A. During the time we were trading for him we owned all the corn in Chicago for Canada parties—650,000 bushels—in the month of October. We carried all of that corn, bought it cash and carried it, and I afterward learned from my brother-in-law, what I have always been loath to charge him with, that they charged him, Mr. Foote, and our Canada parties, both of them, with the same
214 lot of grain in this specific account. They were both charged with carrying corn, and they have sworn it was the actual corn. It never was for Mr. Foote.

Q. I call your attention to an item appearing on the account rendered Mr. Foote under date of May 1st, 1875—30,000 bushels of corn, paid for cash, $23,755.92. You may state what that charge is.

A. It is for carrying property.

Q. Did you carry any such property for Mr. Foote?

A. No, sir.

Q. You may state how that charge was made against Mr. Foote.

A. It was made up from grain that we were carrying for other parties. They had found that Mr. Foote was largely in debt to us—Mr. Lincoln and Mr. Norton had—and they began to trump up artificial charges against Mr. Foote to run the account up against him.

Q. And is that one of the items?

A. That is one of the items.

Q. You may state whose corn that was in fact.

A. We were dealing for several parties. My impression is that it was Horace Alwin, of Port Hope, Canada. We were dealing in corn for several other parties. We had all the corn in Chicago—buying and selling for the same party, off and on.

Q. Who charged up that item in that way in Mr. Foote's account?

215 A. James B. Norton or Mr. Lincoln; they both had charge of the books.

Q. You say that corn was not paid for for Mr. Foote's account?

A. It was not. If it was it was directly against my wishes or orders, though I was the manager of S. G. Hooker & Company, and all such transactions had to pass under my jurisdiction.

Q. Under date of June 1st, 1875, is a charge against Mr. Foote in the account of 250 tierces of lard, paid for, $12,600.62. State the facts about that.

A. We had a large amount of lard for the same man, Alwin—at one time as high as 56,000 tierces carrying for him—and I found that Jim was charging up old man Foote with the property, and I spoke to my brother-in-law about it—the property that we were carrying for another man—and I talked with Jim about it, and he said, Mr. Lincoln tells me to do so. Said I, It is all wrong; we had no instructions to carry any property for Mr. Foote, and it is all wrong to charge him with carrying charges for another man's property.

Q. All the rest of the charges, so far as I can see, between November 7th, 1874, and May 31st, 1876, are for differences or commission on currency. You may state what the word differences, as it appears all through the account, means in this account.

216 A. If we bought 10,000 or 20,000 bushels of corn upon any one day on my order, and it was sold out three days afterward or ten days afterward at two cents a bushel profit or one cent a bushel profit or three cents a bushel profit, it was credited to Mr. Foote as a difference of purchase—a profit upon so much corn—and it was credited up to him as a difference—a profit or loss.

Q. State how it was in relation to a difference where there was a loss.

A. That was charged to him as a difference, loss; so much on such a sale or purchase.

Q. In any of those cases did any arrive at maturity? Was there a delivery?

A. No.

Q. You may state if there was any intention of delivery at the time you made the purchase and sales of any items appearing upon the account with Ira Foote.

A. Not on my part.

Q. Was there on anybody's part, to your knowledge?

A. No; no intention of carrying property, but I found that my partner and my book-keeper were charging him up wrongfully, some carrying charges, and talked to my brother-in-law about it.

Q. You may state, Mr. Hooker, if any statement of account, either of purchase and sale or account current, was rendered by S.

217 G. Hooker & Company to Mr. Foote during these transactions.

A. Yes; I think we used to deliver him the account of purchases and sales frequently at the Tremont house. I used to go there to lunch.

Q. When was the account current rendered, if at all?

A. I don't think he ever had an account current until after we stopped.

Q. Do you remember of having any conversation with him in the spring of 1876 in relation to how much his losses amounted to?

A. Yes; after we had stopped temporarily we didn't know we were going to fail, but we had stopped or gone to protest largely in New York, Albany, Buffalo, and we stopped. Then Mr. Norton went to work and made up an account for Mr. Foote, and I took it to Mr. Foote myself.

Q. How much was the balance due?

A. My impression was about $12,000 or $13,000.

Q. Was there any trading done after that?

A. No.

Q. Did that account have any charges for cash paid for grain or insurance or storage?

A. I think it did.

Q. The same as the one before you now?

A. Yes, sir; the same items are there. We had a conversation about it.

Q. You may state what it was.

218 A. I told Jim, my private book-keeper, and my own brother-in-law, James D. Norton, my wife's brother, now a partner with Mr. Lincoln.

Q. Told him what?

A. That those charges were evidently improper and never should be rendered. He said, Mr. Lincoln says they must be rendered and Mr. Foote must pay them. I was determined I would not have any quarrel with my partner and we rendered the account, but my brother-in-law knows very well what I said about it at the time.

Q. You say the account was about $12,000?

A. About $12,000.

Q. Can you explain how it was that this account was swollen from $12,000 to $22,000 *dollars*, and during such swelling process no trading was done whatever by Mr. Foote?

A. The only explanation I will make, if the master will give me the privilege, is at about this same date Mr. Dan. Tenney was called in and we owed $9,000 on 'change. We had stopped and our transactions on 'change had been sold out for whom they concerned, and we owed about $9,000. Mr. Tenney came in there one day, Saturday, that same week. He said, Mr. Hooker, we are going to make a statement. He said Mr. Fowler, Mr. Pope, and certain other members of the board gave notice that they would not settle with

219 us under our offer of 33% without a statement from books or an exhibit from our books. Now, he said, Mr. Hooker, we don't want you, you talk too much, and he said, Jim, meaning my brother-in-law, and your partner, Mr. Lincoln, are going to stay here to-day and Sunday and see if we can fix your books in some shape so that we can make a showing to the board of trade and get a settlement of 33 cents on the dollar. I did so; was not there Saturday or Sunday. The following Monday said I, Jim, what success did you have with our books? He said, Mr. Tenney says you have

too much assetts and you must make certain charges and certain changes and make the best settlement you can with your books if they force you to show them. That is why I have always been satisfied that Mr. Lincoln and Mr. Norton garbled these accounts, after my knowledge of what the Foote account was.

Q. Now, where — you when the account was finally settled by James H. Rice by turning over these four $5,000 Couch-estate notes and paying $2,000 in cash?

A. We owed Fowler Brothers, the lard men of New York, a difference of a little over $1,000. They had all agreed to settle with us at 33 cents on the dollar. Fowler Brothers, of New York, and Pope, of Chicago, and, I think, Jones & Raymond, of Chicago, they were all suspicious that Mr. Lincoln was a very dishonest
220 man and was trying to cover up our property for the sake of the settlement. Mr. Lincoln wrote to Fowler Bros. for a settlement. Fowler Brothers wrote back to him that he might make as many pleadings as he was a mind to; that they would make no settlement until our books were shown. So Lincoln came to me and said, Hooker, do you think you can settle that account by going to New York? I think I can, if what you say regarding the books is true, said I. He said, What I say regarding the books is true. Said I, If you convince me that our assets will not pay more than 33 cents on the dollar, I can make Fowler Brothers believe it. Said he, That is the condition of our books, isn't it, Jim? My brother-in-law, in whom I had perfect confidence, said, Yes, that is the condition. Said I, I will go to New York to-morrow. Said he, Let me go and see Mr. Pierce. He was then our banker. Mr. Pierce told Mr. Lincoln, I think you better send Hooker to New York; everybody has sympathy for him; they don't like Lincoln; they think Lincoln is not honest, which is the truth; so I packed my bag and went to New York, and that is where I was making that settlement with Fowler Bros. when this arrangement was made here.

Q. About the first of June, 1876, was it?

A. Yes, sir.

221 Q. I will ask if there was any trade made by S. G. Hooker & Company for the account of Ira Foote between the 7th day of November, 1874, and the 31st day of May, 1876, that was made with any intention of delivery by the seller; you may state what the trade was.

A. No trade, to my knowledge, was made with the intention of delivery.

Q. If there was any actual delivery made in any article bought or sold in the account of Mr. Foote, state what it is.

A. I don't know of any that was bought and delivered for the account of Ira Foote.

Q. Do you remember the fact of Mr. Foote giving you a note of $15,000 during the course of this trading?

A. Yes, sir.

Q. State how that came about.

A. That was an accom-odation note to me as the firm of S. G. Hooker & Company. We were overdrawn at bank, and the market

declining rapidly, and I was worried for fear we would be called upon for more money, and I went to Mr. Foote—we were trading for him without margins—and said, I wish you would give us an accommodation note for the Third National bank that we can deposit in that bank as collateral for our overdrafts. He came to the office and did so. The question came up as to how much he owed us, and it was then somewhere between $5,000 and $7,000 when that note was given.

222 Q. Was it in any way given or talked about as a payment or margin?

A. No; it was accommodation paper?

Q. Nothing else?

A. No, sir; as bank collateral for overdrafts.

Q. I notice in the account of S. G. Hooker & Company against Ira Foote, on the sixth page, the transaction, some currency paid for Foote on July 5th, 1875, of $1,000. What are these payments amounting to $1,000 or $2,000? State about those.

A. My recollection of those is that they were profit upon purchases of options bought during one month and sold the same month, before the maturity of the contract; they paid that profit.

Q. That money was paid to Mr. Foote, was it?

A. Yes, sir.

Q. As appears in the account?

A. Yes, sir.

Q. When you returned from New York after making this settlement with Fowler Brothers did you ascertain and learn of the fact that Mr. Rice, as the attorney-in-fact of Ira Foote, had turned over to S. G. Hooker & Company the four $5,000 notes made by the trustees of the Ira Couch estate? Did you learn that fact?

A. I did.

Q. You may state what the firm of S. G. Hooker and Company did with those four notes.

A. At the dissolution of the firm of S. G. Hooker and Company the agreement between Mr. Lincoln and myself as to its final winding up and settlement was that my brother-in-law, James B.

223 Norton, should take the assets of S. G. Hooker & Company all over there, settle, collect them, and pay our debts and make the division between Mr. Lincoln and I, which was entirely satisfactory to me, although I had lost very great confidence in my brother-in-law; but I knew he would not rob his sister unless Mr. Lincoln forced him to. Later there was an agreement or understanding between us three in the office. Later I formed a new copartnership, and was on 'change one day the first intimation I ever had that our agreement was not all correct and proper. I was called off by an officer and served with an injunction from the attempt to collect the $5,000 Ira Couch estate note that we had taken from Mr. Foote. I was very much surprised. I had no idea what the trouble was. I went off from 'change and found Mr. Lincoln. Said I, Mr. Lincoln, I have been enjoined from collecting that Couch-estate note. What does it mean? Said he, I guess Mr. Foote is going to enjoin us from collecting them. I said, Why haven't I had something to do with

it? I said, Now, where are those notes? I don't know anything about it. I supposed Jim had the notes under our agreement. He said, Dan Tenney has two of the notes; I have the other two. I said, I thought they were with Mr. Pearce under our assignment. I the had heard previous to that that Mr. Norton had not got all assets.

224 Q. You say that two notes were with Mr. Tanney at that time?

A. Yes, sir.

Q. And two in the hands of Mr. Lincoln?

A. Yes, sir.

Q. Did you have any talk with J. Irving Pearce about it?

A. Yes, sir.

Q. When was it?

A. The next day after the injunction Mr. Pearce sent for me and said, What about the Couch-estate notes? I said, I never saw them. I thought you had them. He said, I didn't know about them. He said, If I am going to be assignee I want all the assets. I said, I will go and see Mr. Lincoln. I said, Mr. Pearce says you have not surrendered those notes to him at all. Now, Hooker, he said, you are aware that I had more money in the company than you did, and the Couch-estate notes are among our most available assets. One of them particularly is just maturing. I think I ought to be allowed to retain those notes myself. Hence, said he, I haven't turned them over to Mr. Pierce at all. Said I, Mr. Lincoln, you must do that forthwith or I will make trouble. Said he, Hooker, you ought to be reasonable about it. Said I, You have falsified from the start, and for a year before you dissolved with me you have falsified to me and on our books, and misrepresented to me and to our creditors, and disgraced me, saying that we ought to settle with 33 cents on the dollar when we have $75,000. You have got to put the property

225 in the hands of Mr. Pierce, where it belongs. He goes down to Mr. Pearce and surrenders, I understand, two of the longest of the notes, and Tenney and he claims the balance, and fought them all the way through.

Q. That was after this injunction was served?

A. Yes, sir.

Q. Was that the injunction issued in the case of Ira Foote against S. G. Hooker & Company?

A. Yes, sir.

Q. From the superior court of Cook county?

A. Yes, sir.

Q. Have you any other means of fixing the date of this interview with Mr. Lincoln & J. Irving Pearce in relation to the whereabouts of these four notes other than the service of the injunction upon you in that case?

A. No; that is exactly how I place it.

Q. No other means of fixing it?

A. No.

Q. I wish you would state what books the firm of S. G. Hooker & Company kept, and what has become of them, so far as you know.

A. I found I wanted a statement of my own account.

Q. State first what books were kept.

A. They kept a blotter, journal, a day book, and ledger and option book—a regular set of commercial books.

Q. State what the option book contains as to the trades made by S. G. Hooker & Company.

226 A. Contains an exhibit of every transaction made for Ira Foote and what became of the grain—how settled.

Q. And also with other parties?

A. With other customers.

Q. What became of all those books, so far as you know?

A. They were turned over, Mr. Norton told me—our book-keeper—to J. Irving Pearce.

Q. At the time S. G. Hooker & Company made the assignment?

A. Yes, sir.

Q. Have you ever seen them since?

A. Yes, sir.

Q. Where?

A. In the Third National Bank.

Q. Mr. Pierce was president of the Third National Bank, was he?

A. Yes, sir.

Q. You say the option book would show how every trade was disposed of?

A. Yes, sir.

Q. I wish you would state how the trades were disposed of that you made for Mr. Foote. Supposing you bought for him some wheat for delivery two months in the future, you may state how the trade was disposed of.

A. I don't think we made any trade for him as far off as that.

Q. Any time in the future, state how they were disposed of.

227 A. We usually bought the grain or the property that we bought for him for the following month—the next month to the month we were trading in—and sold it before the contract matured—before the liability of its being delivered the first of the month. It was the option to deliver if we bought it the first day of the month or have all the month to deliver.

Q. Supposing you bought some wheat for Mr. Foote at the present time, June 26th, for delivery in August, now you own that wheat, do you?

A. Yes, sir.

Q. What do you do with that particular trade—carry it or settle it up?

A. Carry it until we are satisfied whether it is profit or loss during the life of the contract, and sell it before maturity.

Q. Before the maturity?

A. Yes, sir.

Q. Was that the universal rule?

A. Yes, sir; it was in his case. We were trading for Canada parties and almost always taking the property.

Q. Do you know where that option book is?

A. I know where it was after the assignment was made a year.

Q. Where was it then?
A. I saw it in the vault of the Third National Bank.
Q. Have you seen it since?
A. No, sir.
228 Q. Who kept that book during the time you were trading for Ira Foote?
A. Mr. Norton & Mr. Lincoln, both.
Q. What rate of commission did you agree to charge Mr. Foote?
A. $\frac{1}{4}$ of 1 %.
Q. Did you ever see this account that was made out by Mr. Lincoln, amounting to about $19,000 as his losses?
A. I did.
Q. What commission was charged him?
A. $\frac{1}{2}$ of 1 %.
Q. State what occurred in relation to that between you and Mr. Lincoln and Mr. Foote, if anything.
A. Mr. Foote came to me and asked about it, and I agreed to trade for him for $\frac{1}{4}$, and Mr. Lincoln asked me the same question, and I told him I had agreed to trade for $\frac{1}{4}$.
Q. Do you know what became of that account?
A. Mr. Norton knew it previous to that, but had charged it up the same as the others.
Q. $\frac{1}{2}$ of 1 %?
A. Yes, sir. He knew all about the transaction with Mr. Foote.
Q. Do you know where Mr. Norton is now?
A. If he is alive he has gone to the mountains for his health; he is just alive.

By agreement of counsel, the taking of further testimony in this case is adjourned to Tuesday, June 30th, 1885, at 8.45 a. m.

229 JUNE 30TH, 1885.

J. IRVING PEARCE, being first duly sworn, testified on behalf of James H. Rice and Ira Foote as follows:

Q. What is your full name?
A. J. Irving Pearce.
Q. Where do you reside?
A. At the Sherman house.
Q. In the city of Chicago?
A. In the city of Chicago.
Q. Were you formerly president of the Third National Bank of Chicago?
A. Yes, sir.
Q. From what time to what time?
A. I think it was from 1866 or 1867 to the closing of the bank. That was in November—the 21st—1877. My successor has never been elected.
Q. You have resided in Chicago continuously for the last 20 years or more, have you?
A. Yes, sir.
Q. Were you acquainted with S. G. Hooker and George D. Lin-

coln, copartners composing the firm of S. G. Hooker & Company, doing business on the Chicago Board of Trade in this city?

A. I was.

Q. Did they do their banking business with the bank of which you were president?

A. Yes, sir.

Q. You may state whether or not said firm made an assignment; and, if so, when and to whom.

230 A. They made an assignment to me on the 28th day of February, 1877.

Q. Is a copy of the assignment attached to your cross-bill in this case?

A. Yes, sir; I don't know whether it is correct or not. My recollection is there was an acceptance. I accepted the assignment. I don't see it here.

Q. You may state what books came into your hands from S. G. Hooker & Company at the time the assignment was made or very near that time.

A. There was a large number of books came into my hands purporting to be the books of S. G. Hooker & Company. I never made a schedule of the books, therefore I couldn't state what they were.

Q. I will ask if all the books were turned over to you.

A. I supposed they were.

Q. So far as you knew?

A. Yes; so far as I knew.

Q. What did you do with the books?

A. I was there in the Third National Bank and they were put in the vault of the Third National Bank.

Q. You may state where they have been kept since the assignment was made.

A. They have been kept in the vault of the Third National Bank or in the receiver's vault and lately at the Sherman house.

Q. The hotel that you are running?

A. Yes, sir.

Q. What place in the Sherman house?

A. In the basement, a room that is made for a store-room, fireproof.

Q. Are the books of the Third National Bank also kept in

231 the same room?

A. Yes; a good many of them; the majority of them.

Q. Will you state where the option book kept by S. G. Hooker & Company now is?

A. That I couldn't state. I will say in connection with this that the books have been in various courts, the United States courts, and if we had the option book that was the last time I saw it. I know there was a book something as they described; don't know as I ever opened the book. It was in before Judge Blodgett.

Q. When?

A. When this case was up before him the Third National Bank produced the book.

Q. Did you ever see it so as to identify it, the option book kept

by S. G. Hooker & Company from the time they commenced business in 1871 up to 1876?

A. I don't know that I did.

Q. Can you state from any distinct recollection, Mr. Pearce, that you ever in your life saw that book?

A. Only from a description here before Mr. Sherman the other day of the book, my recollection is that I had seen such a book.

Q. Whose description do you refer to?

A. Mr. Hooker and Mr. Lincoln attempted to show me about the size.

Q. In giving their testimony here before the master?

A. Yes; it was my impression that I had seen the book some time.

Q. Have you searched for this option book about which I am enquiring among the books of S. G. Hooker & Company'- estate and the Third National Bank books?

A. Yes; I have had it done by my son.

232 Q. Give a picture of what you have done to find that book.

A. The books of the Third National Bank were around in shelves in the vault or room, and I had my son and others in my employ also search for it. They were not able to find it. Of course, you understand there are a good many books of the Third National Bank. I guess it is as high as that around that room.

Q. Have you been able to find it?

A. Not been able to find it.

Q. Has any one that you have selected to search for the book been able to find it?

A. No.

Q. I will ask you to state whether that option book is in your possession or not.

A. I don't believe it is. If it is there it is among the books of the Third National Bank in some way, and I have not been able, or anybody else, to find it.

Q. Were you served with a subpœna to produce this and other books before this master something like three weeks ago or more?

A. Yes, sir.

Q. You were served with that subpœna?

A. Yes, sir.

Q. And you came to court yourself at that time?

A. Yes, sir.

Q. And reported that you were looking for the book?

A. Yes, sir.

Q. And were you requested by counsel for Mr. Rice and for Mr. Foote to continue the search and produce it, if you could?

A. Yes; I think I was.

233 Q. And you have done so, haven't you?

A. Yes, sir.

Q. You have searched for it?

A. Yes, sir.

Q. Do you desire to search any farther for that book?

A. Yes; I want to see it myself.

Q. And you will search farther?

A. Yes, sir.

Q. And if you find it you will produce it before the master?

A. Yes, sir; I want to see it myself. I came here. You told me simply to bring what they called for—the blotter and the journals—and I have been ready to bring them any time.

Q. So far as any books you have found?

A. Yes; such books as I thought would throw light and what you decided would be what you wanted.

Q. Where are those books?

A. Down at the house.

Q. You will produce them any time when requested by the master?

A. Yes; all ready to come any time.

Q. If you find the option book, Mr. Pearce, you will immediately produce it to the master taking this testimony?

A. Yes, sir.

By Mr. JACKSON: You accepted the trust under the assignment?

A. Yes, sir; I accepted it by signing it, as will appear by my cross-bill.

By agreement of counsel, the taking of further testimony in this case is adjourned to this afternoon, June 30, at 3 o'clock p. m.

234 JULY 1ST, 1885.

STEPHEN G. HOOKER recalled for cross-examination by Col. JACKSON:

Q. Are you a member of the board of trade now?

A. No, sir.

Q. Since what date have you ceased to be a member?

A. My membership was assigned to my son about a year ago.

Q. By whom was it assigned?

A. By me.

Q. Has your son the membership now?

A. Yes, sir.

Q. What are your relations towards your brother-in-law, Mr. Norton?

A. The same as between most brothers-in-law where one betrays the other.

Q. Are they friendly or unfriendly?

A. They are nothing at all. I haven't spoken to him for years.

Q. Then they are not friendly, are they?

A. I hav-n't spoken to him for years. I am sorry for it. My sympathies are very strong for him, for he is very near his grave, and I feel very sorry for him.

Q. How many years is it since you have spoken to him?

A. I don't remember how many years.

Q. Is it two years?

A. I can't say.

Q. Is it one year?

A. I think likely; perhaps more.

Q. You said it was years?

A. Yes. I haven't spoken to him for perhaps two years; perhaps three.

235 Q. What are your relations towards Mr. Geltmacher?

A. About the same. He is one of this clique that has attempted to blackmail me and impeach me two or three times in court.

Q. What are your relations towards Mr. Lincoln?

A. The same; just the same.

Q. What are your relations towards Mr. Pearce?

A. I have no feeling towards Mr. Pearce except that he is a betrayer of confidence. He became my assignee. I forced Mr. Lincoln to make an assignment to a man that I supposed was my friend because he had loaned me thousands and thousands of dollars on my face alone without collateral. I supposed he was a friend. I have since learned the man.

Q. What are your relations towards Mr. Foote?

A. I don't feel very friendly towards Mr. Foote. He has done me a great injury, or this transaction has. This transaction ruined me, together with the action of my partner and my brother-in-law and the parties associated with the transaction, so of course I don't feel very friendly towards Mr. Foote.

Q. How long have you known Mr. Foote?

A. I have known Mr. Foote pretty nearly 30 years.

Q. Where did you first know him?

A. I should say perhaps 1851 or 1852.

Q. Where did you first know him?

A. I wrote to him in Central New York. I was doing some building in Peru, Illinois—building a church and a large school-house. I learned of Mr. Foote's being an excellent mechanic, and I wrote him to come to me, and he came to me at Peru.

Q. Has he ever lived with you?

A. He has.

Q. In what places?

236 A. He lived with me at Peru, Illinois, and at Chicago.

Q. It was at Peru you first became acquainted with him?

A. Yes, sir; he came to me at Peru.

Q. For how long a time did he live with you in Chicago?

A. I don't remember exactly; he was in my family; lived with us, boarded with us between 5 and 7 years.

Q. During what period of time was that, what years?

A. From about 1851 till he went to the mountains; I forget what year he went there; it is a long time ago; I don't remember exactly how long.

Q. That was the only time he ever lived with you?

A. Yes, sir.

Q. Who is the Mr. Adams that you say acted as broker for Mr. Foote at one time?

A. He was in the commission business here at the time this oats transaction was done for Mr. Foote.

Q. What is his full name; do you know?

A. George Adams, I think.
Q. Do you know where he is now?
A. I do not.
Q. Do you know whether he is in Chicago?
A. I do not.
Q. Were the trades which you conducted for Mr. Foote, your firm, under the rules and regulations of the board of trade?
A. I suppose they were; yes, sir.
Q. Don't you know?
A. I suppose they were made the same as we made others, barring my agreement with Mr. Foote not to take any property.
Q. Do you know whether they were or not made under the rules and regulations of the board of trade?
237 A. I say I suppose they were.
Q. You have no doubt of it?
A. I have no doubt they were purchases and sales on options.
Q. You have no doubt that they were made under the rules and regulations of the board of trade, then, have you?
A. I am told that some members of the board of trade and some officers of the board of trade claim that every transaction made there is made with the intention of taking property, ultimately taking their property if necessary or required to.
Q. I don't ask you what you are told. I ask you whether the trades that you made for Mr. Foote were made under the rules and regulations of the board of trade.
A. I suppose they were in the first instance; yes, sir.
Q. Don't you know they were?
A. Yes; I think I know they were.
Q. Did Mr. Foote ever give you personally any orders to buy or sell to his account?
A. Yes, sir.
Q. What transactions were they?.
A. I couldn't state. He would ask my advice, and said he, You buy 10, 20, or 40 thousand. He would do it on my judgment when I told him I thought it was best to do it.
Q. Who made the purchases and sales on the board of trade for Mr. Foote?
A. They were made by myself and Mr. Norton, and I guess Mr. Geltmacher made some.
Q. Who made most of them?
A. I made most of them.
Q. How many did you make?
238 A. I couldn't say.
Q. How many were made altogether—do you know?
A. No; I don't. If you will bring the option book that will show, and will tell you exactly how many trades were made for him.
Q. Do you know how many purchases and sales were made for Mr. Foot?
A. I don't, except by the account.
Q. When you made the purchases for Mr. Foote was it that the

seller had the option to deliver the com-odity within a certain time?

A. Yes, sir; if we bought it.

Q. If you made the purchase the seller had the right——

A. He had the whole month to deliver it.

Q. During the whole of the month to deliver?

A. Yes, sir.

Q. The only option, then, was the time during which the seller was allowed to make the delivery, was it?

A. Yes, sir.

Q. Who suggested that Mr. Foote should trade with you? Did you suggest it to him or he suggest it to you?

A. He suggested it to me in the first instance.

Q. Where was it that he suggested this?

A. At the Tremont house.

Q. Who was present at that time?

A. George Hook, his former time-keeper.

Q. What was George Hook's business at that time?

A. Keeping time for Mr. Hook—had been.

Q. What was George Hook's business at the time you had this conversation with Mr. Foote?

A. I don't know what he was doing then.

Q. Was he not the barkeeper at the Tremont house?

239 A. No.

Q. Was he ever barkeeper at the Tremont house?

A. Not that I know of.

Q. What was he doing there at the Tremont house?

A. I don't know.

Q. Do you know whether he had charge of the saloon at the Tremont house?

A. I do not.

Q. Were you living at the Tremont house?

A. I was not.

Q. Who was living there at that time—was Mr. Foote?

A. Mr. Foote.

Q. Where did this conversation take place in the Tremont house?

A. In the corridor of the Tremont house.

Q. What was done with the note which you say Mr. Foote gave S. G. Hooker & Company, the first note of $15,000, I believe?

A. It was a long time ago. My impressions are that the note was placed in the bank as collateral security against our overdrafts.

Q. Do you say it was placed as collateral security?

A. I think so.

Q. With whom?

A. Third National Bank.

Q. It was not discounted?

A. I think not at all.

Q. Who called for the note—asked Mr. Foote to give it?

A. I asked him to give it.

Q. Where did you ask him?

A. At the Tremont house.

240 Q. Why did you ask him?
A. We were using a large amount of money and were overdrawn at bank from time to time.
Q. Who has the note now?
A. I don't know.

Col. Jackson, counsel for the Third National Bank, calls for the production of the note above referred to.

Q. At what time was it given?
A. I disremember, Mr. Jackson, the month and the date.
Q. Was Mr. Foote indebted to your firm at that time?
A. I think he owed something.
Q. Do you know how much?
A. I do not.
Q. Have you any idea?
A. Perhaps $300 or $400 or $500.
Q. Not more than that?
A. I should judge that; that is my impression.
Q. Was the note ever entered upon the books of your firm?
A. I don't remember. Mr. Lincoln and Mr. Norton had charge of our books.
Q. You could see them, could you not, if you wanted to?
A. Yes; but I was doing all the business and furnishing it all.
Q. How much capital did you put into the firm?
A. I couldn't tell you.
Q. Don't you know whether you put any in or not?
A. Yes, sir.
Q. How much did you put in?
A. I don't remember.
Q. Did you put in anything?
A. Yes, sir.
241 Q. What did you put in?
A. I don't remember.
Q. Did you put in $500?
A. I don't remember.

Counsel for James H. Rice and Mr. Foote objects to the question of how much capital S. G. Hooker put into the firm of S. G. Hooker & Company for the reason that it has not been inquired into in chief; neither is it material in any aspect in this case, there being no such issue in this case; neither is it material in impeaching testimony nor for any other purpose.

Q. How much did Mr. Lincoln put in?

Counsel for James H. Rice and Mr. Foote makes the same objection in reference to the capital Mr. Lincoln put into the firm of S. G. Hooker & Company for the same reasons.

A. He put in $10,000 at first.
Q. How much did he afterwards put in?
A. I don't remember the exact amount. There was about $25,000 collected by him of the Norton and Scott, with which he was occu-

pied most of the time he was my partner in settling that estate, that went to his credit upon our books.

Q. When was the note of $15,000 returned to Mr. Foote, if it was returned?

A. I don't remember.

Q. Do you know whether there was any endorsement upon that note?

A. I don't know.

Q. You don't know, you say, how much Mr. Foote was indebted to your firm at that time?

A. I disremember the exact amount.

Q. Do you know whether your firm ever paid out on ac-
242 count of the purchases for Mr. Foote any money for storage?

A. I don't think we did; not to my knowledge.

Q. Do you know whether they paid any money for commission to any broker?

A. I don't think we ever paid any brokerage.

Q. Did your firm charge commissions?

A. Yes, sir.

Q. On account of the purchases?

A. Yes, sir.

Q. Did you ever pay out any insurance on account of the purchases?

A. For Mr. Foote?

Q. Yes.

A. Not to my knowledge.

Q. Did you ever pay out any cartage?

A. Not to my knowledge.

Q. You don't know anything about it?

A. I had charge of the entire business of S. G. Hooker & Company.

Q. Did you have charge of the expenses, receipts, and disbursements?

A. I had charge of all the purchases and sales—all the transactions that were made on 'change.

Q. Who paid out the money for expenses?

A. Mr. Norton.

Q. Then if there were any disbursements made on account of Mr. Foote for storage, insurance, or for cartage would you know anything about it?

A. Yes, sir.

Q. How would you know?

A. Because it would be charged up to Mr. Foote or Mr. Norton would come to me about it. He never made but one trans-
243 action that I didn't know anything about, and that was just previous to our failure. Mr. Lincoln and Mr. Norton checked $18,000 out of our account and sent it up to Iowa unbeknown to me. That was about the only transaction of that kind that I was not advised of. First I knew Jim came to me—my brother-in-law—with an account. In about ten days they had sent $18,000 of our money out in Iowa.

Q. Who had sent this?
A. Mr. Norton and Mr. Lincoln.
Q. Who did they send it to?
A. To his brother and Mr. Norton's brother, who were up there doing business.
Q. What were their names?
A. Lincoln; the other, Norton—George Norton. He was my brother-in-law, the same as the one we are speaking of.
Q. Were they partners?
A. He had a brother or a half brother there in business with him.
Q. What part of Iowa?
A. Atlantic, Iowa.
Q. Mr. Norton and Mr. Lincoln were partners?
A. Yes, sir.
Q. In what business?
A. They were running a flouring mill.
Q. What date was this $18,000 sent to them?
A. Perhaps two months previous to our stopping business.
Q. For what purpose, do you know?
A. I suppose that it was to get it out of the hands of S. G. Hooker & Company.
Q. What did you say when you understood that this had been sent to Iowa?
244 A. I made quite a disturbance about it.
Q. With whom?
A. Mr. Norton.
Q. What kind of a disturbance?
A. Gave him a good scolding for checking that amount of money out of the bank without my advice what it was for.
Q. Were Norton and Lincoln doing business with your firm at that time?
A. Yes, sir.
Q. What was their business?
A. They were milling; running a flouring mill.
Q. How was this money sent?
A. I never knew. I didn't know it was sent till Mr. Norton felt a little guilty about it and finally came to me and told me.
Q. If there had been any charges in the books for storage or for insurance or for cartage would you have known it?
A. Yes, sir; I think so.
Q. Do you know whether there were any charges in the books?
A. I disremember now. I hav-n't seen our books except once, then partly, since our failure.
Q. In your transactions on account of Foote did you charge to him whatever sums were paid in settling differences when they were against him?
A. I didn't have charge of the books at all.
Q. Did the firm charge to him whatever sums were paid in settling differences? Is that the way the account was kept?
A. Yes; I think so.

Q. Then they gave him credit when the firm received the differences in his favor?

A. I think so.

245 Q. In other words, they paid the money out when the market was against him?

A. I think so.

Q. And received the money when the market was in his favor?

A. I think so.

Q. Did you or did your firm, in any transaction on account of Mr. Foote, take in any grain or any commodity whatsoever?

A. I don't think we did; didn't to my knowledge.

Q. You don't remember of ever taking in any commodity?

A. No, sir.

Q. Do you remember anything with reference to a lot of corn which was purchased for Mr. Foote?

A. I do.

Q. Was that taken in?

A. No, sir.

Q. What was done with that corn?

A. It was sold out as an option.

Q. Didn't you, in the case of Pearce against Foote, testify that you consented to take in one lot of corn for Mr. Foote?

A. I don't remember what I testified to.

Q. Suppose you had testified to that in that way, would it have been true or not?

A. I might have forgotten it.

Q. You might have forgotten it now?

A. Yes; and if we did it was directly contrary to my agreement with Mr. Foote. I don't remember. Mr. Lincoln was constantly scheming about the account all the time, and I had a good deal of trouble about it.

Q. You don't remember whether you testified in that case whether you consented to take in one lot of corn for Mr. Foote or not?

246 A. No, I don't remember; this case has been 5 or 6 years, and I don't remember everything I testified to on the first trial.

Q. How many times have you testified altogether?

A. I should think, perhaps, a dozen.

Q. How many different cases have arisen about this transaction?

A. It has been to the Supreme Court twice, and through the circuit court and appellate court twice.

Q. You don't remember, then, whether you consented to take in a lot of corn?

A. I disremember everything I said at that time.

Q. When the dealings were closed on account of Mr. Foote he was indebted to your firm in about $22,000, was he not?

A. No, sir; my recollection was it was between $12,000 and $14,000; I don't remember.

Q. He settled upon the basis of $22,000?

A. Yes, sir.

Q. The notes were given in consideration of that indebtedness?

A. Yes, sir.

Q. Two of the Couch notes, with Mr. Foote's guarantee upon it, were delivered or given to the Third National Bank, were they not?

A. No; not to my knowledge.

Q. They were given, were they not?

A. Not to my knowledge.

Q. What was done with the notes—the four notes?

A. The four notes were given to Mr. Lincoln in my absence and kept by him, so far as I know, until after this suit was commenced and the injunction served. I then found that the Third National Bank had two of them and Dan. Tenney one and Mr. Lincoln one, so Mr. Lincoln told me himself.

Q. When was the injunction served?

247 A. I don't remember the date.

Q. Do you remember the year?

A. My impression is it was in the fall of 1876 or the spring of 1877.

Q. When did you learn that the two notes were given to the Third National Bank?

A. Some time just previous to the trial in this case.

Q. What trial?

A. Before McAllister.

Q. Was that the Tenney case?

A. Yes, sir.

Q. You never heard of it before then?

A. No—that is, Mr. Lincoln—after this injunction was served I forced Mr. Lincoln to put these notes in the hands of our assignee, or he said he did—said he would.

Q. How many notes did you force him to put in the hands of the assignee?

A. He said he would surrender them all except one that was about due that Tenney had, he said, and wanted to collect it.

Q. Don't you know that two of those notes had been before that time delivered to the Third National Bank of Chicago?

A. No, sir; they were not, so Mr. Lincoln told me.

Q. You say they were in Mr. Lincoln's possession at that time?

A. Yes; Mr. Lincoln's or Mr. Tenney's.

Q. That is after the injunction was served?

A. Yes, sir; I will recite a conversation that occurred soon after this. I went to Mr. Lincoln after Mr. Pearce called my attention that he had never seen or received the notes under our assign-

248 ment. Said I, Hav-n't you turned over all our assets to Mr. Pearce? No, said he; I had more money in the concern than you did, and I think I ought to be allowed to hold the Couch-estate notes, as they are the most available assets among our estate, and I want to keep them instead of turning them over. Said I, He is our assignee, and he must have all of them. He afterwards, and Mr. Pearce, told me that he had got them—perhaps two of them or the whole of them, I don't remember; but I found out that time, between the time of the injunction and the trial before McAllister, that the Third National Bank had two of them; in fact, I went and

examined somebody's interlining on the note, right on the margin, that the note was amply secured; but in order to get in an innocent holder's hands they had interlined the note.

Q. Interlined what note?

A. "Also by two Couch-estate notes."

Q. You say the note was one amply secured; what note?

A. The note we had in the bank.

Q. Has it ever been paid?

A. I think so. There was ample security behind it.

Q. Do you know whether that note has been paid or not?

A. I don't know.

Q. Don't you know that it has not been paid?

A. I don't know. If it has not it had plenty of property embodied in the note. The bank was very much to blame if it was not paid. It was their negligence if it was not. There must have been some scheme about it if Mr. Pearce allowed that note to run along unpaid. It was interlined, a note that I had made myself and signed.

Q. How interlined?

A. I don't know. Somebody——

249 Q. What was interlined?

A. After naming the collateral, right down on the margin at the bottom, "Also two Couch-estate notes," in a different-colored ink and different handwriting entirely.

Q. When was the assignment made by your firm, Mr. Pearce?

A. I disremember.

Q. You don't remember what year?

A. The fall of 1876 or spring of 1877; I think fall of 1876.

Q. How many notes came into the hands of Mr. Pearce as assignee?

A. I couldn't tell you.

Q. Do you know whether all four notes came into his hands?

A. I couldn't tell you.

Q. Whether three came?

A. I couldn't tell you.

Q. Or two?

A. All I know about is what Mr. Lincoln said he would do, that he would turn the notes over to Mr. Pearce, and Mr. Pearce afterwards told me he had got them, but at the time of the injunction he said he knew nothing about them and had not received them.

Q. Who said this?

A. Mr. Pearce. He told two or three different parties so, too.

Q. Do you know the time when the two notes came into the possession of the Third National Bank?

A. No; except Mr. Pearce's statement at the time — this injunction. My attention was called to it that he hadn't them or never had seen them.

Q. Did Mr. Pearce state to you that the two notes had not been received?

250 A. He said he never had seen the Couch-estate notes or held them.

Q. You say this was subsequent to the time the injunction was served?

A. After the injunction was served.

Q. That this conversation took place between you and Mr. Pearce?

A. Yes, sir.

Q. Where did the conversation take place?

A. Third National Bank.

Q. Who was present at the time?

A. Nobody except Mr. Pearce and I; I guess Mr. Parsons.

Q Mr. Parsons is dead, is he not?

A. Yes, sir. I think he was present.

Q. What time was it that this conversation took place?

A. Some time during the day.

Q. What year?

A. I have stated that I think the fall of 1876. The assignment will tell; it was two days after the assignment.

Q. What month was it, can you remember?

A. No, I can't remember the month; the same month the assignment was made; that will show.

Q. When was the injunction issued, what month?

A. My impression is in November.

Q. What year?

A. 1876 or 1877.

Q. 1876 or 1877?

A. Yes; I hav-n't seen the assignment, and my attention had not been called to the matter.

Q. When was the injunction issued, was it before or after the assignment?

A. After the assignment.

251 Q. How long after the assignment?

A. I don't recollect exactly how long.

Q. Was it a week or a month, or three or four months?

A. I should say a month or six weeks after.

Q. About six weeks after the injunction?

A. Probably might have been two months, might not have been more than four weeks; I couldn't tell.

Q. After the assignment?

A. Yes, sir.

Q. How often did Mr. Foote come into your office to talk about these matters?

A. Sometimes once a week, sometimes once a day.

Q. For how long a period of time did these transactions run?

A. My recollection is about a year, perhaps longer than that.

Q. He knew what you were doing for him?

A. He knew we were trading for him; yes, sir.

Q. Was he advised whenever any purchase was made for him?

A. Yes, sir; as a rule.

Q. Was he advised when any sales were made?

A. As a rule.

Q. How was he advised, orally or by written communications?

A. Sometimes orally and sometimes by an account purchase and sale.

Q. Were the trades which were made for him any different from that you made for other customers?

A. Yes, sir; the intention was different.

Q. As a matter of fact, the trades upon the board of trade were the same as for other customers?

A. Yes, sir; the purchase was made in the same form.

Q. Can you give the names of any of the parties from whom you made purchases on account of Mr. Foote?

252 A. I cannot.

Q. Can you give the names of any parties to whom you made sales?

A. I couldn't. The option book will show, if you bring that.

Q. When did you first hear of any objection on the part of Mr. Foote to these notes of the Couch estate which were delivered to your firm?

A. Never heard him object to the Couch-estate notes. That is a very singular question; I don't understand your question.

Q. Did he ever object to your having possession of them?

A. They were good; I never heard him object to them.

Q. Did he object to your having possession of them?

A. Not to me.

Q. When did he first attempt to have you give them up?

A. The first I knew anything about it I was called off the board of trade, and served with an injunction by the sheriff.

Q. The first notice you ever had?

A. The first I ever knew that he was going to fight them to recover them.

Q. Have you seen the statement which was introduced in evidence in the prior case of Pearce against Foote?

A. What statement?

Q. The statement of account showing the account between Mr. Foote and S. G. Hooker & Company?

A. I presume I saw it.

Q. The statement which shows that monies were paid out upon differences. Were they actually paid out?

A. I know nothing except the statement.

Q. In settling on differences you do pay out money, do you not?

A. Yes, sir.

253 Q. And in settling on the differences for Mr. Foote, monies would naturally be paid out on his account, would they not?

A. I presume so.

Q. Did you at any time ever call upon Mr. Foote for margins?

A. No.

Q. Did you ever authorize any one to do so?

A. No.

Q. Did you ever authorize Mr. Geltmacher to call upon Mr. Foote for margins?

A. I did not myself, that I recollect of. I have a recollection that he testified before McAllister that Mr. Lincoln sent him to the Tremont house once to try to get some money out of Mr. Foote.

Q. Do you remember whether you testified in the case of Tenney against Foote that you consented to take in a lot of corn?

A. I don't recollect.

Q. Do you remember in that case whether you testified that Mr. Lincoln thought he could make carrying charges by taking a lot of corn in, and that you consented and it was done?

A. I have an indistinct recollection of portions of that testimony, the bulk of which was regarding my agreement with Mr. Foote. I don't recollect in detail anything that I testified to at that time; it was 5 or 6 years ago.

Q. How was Mr. Foote connected in business with Mr. Rice?

A. He was partner.

Q. How long a time was he partner?

A. I think two years, perhaps.

Q. He was a partner only for two years?

A. He said so, only two or three years.

Q. During what years?

254 A. I think 1873, 1874, and 1875, part of 1875, and I don't know but longer than that.

Q. Do you know whether Mr. Foote ever gave any orders to Mr. Lincoln to make any purchases or sales?

A. I do not.

Q. Do you know whether he ever gave any to Mr. Norton or Mr. Geltmacher?

A. I do not. As a rule, the orders came through me.

Q. But all the sales were not made by you, were they?

A. They were dictated by me, yes, sir.

Q. All the purchases made by you?

A. Dictated by me.

Q. Do you know every case in which a purchase was made?

A. Yes, sir.

Q. And in which a sale was made?

A. Yes, if I was in Chicago.

Q. How many sales and purchases were there that were made?

A. If you will bring the option book, that will tell you; I can't tell you.

Q. Can you tell without the option book?

A. No.

Q. Do you know of your own knowledge that the 30,000 bushels of corn purchased May 1st amounted to $23,755.92, and was not paid for in cash?

A. Only as I know everything that went through the office.

Q. But of your own knowledge you know nothing about it?

A. I have no idea it was, because there was—it was strictly forbidden by me to pay for any property for Mr. Foote.

Q. But of your own knowledge you know nothing about it, do you?

A. No, except in a general way.

255 Q. What time were you dealing with the Canada parties?

A. We were trading with them for part of three years, my impression is.

Q. You stated that at one time your firm owned all the corn in Chicago?

A. Yes, sir.

Q. For the Canada parties?

A. Yes; 650,000 bushels.

Q. And you say part of the same corn that was purchased on account of Mr. Foote was the same that was purchased for the Canada parties?

A. Some of these charges were made up from carrying charges at the same time we were carrying for him.

Q. How do you know that?

A. Mr. Norton told me so at one time.

Q. What did he say?

A. He said Mr. Lincoln told him to charge Mr. Foote with carrying corn that didn't belong to him.

Q. Do you know whether that was done?

A. I think I do.

Q. How do you know it?

A. It came from him.

Q. Do you know whether it was done or not as a matter of fact?

A. I do.

Q. How do you know it?

A. Because I have seen the account, and I know that we didn't pay for any corn for him.

Q. You know there was no corn paid for?

A. For other men, not for Mr. Foote.

Q. How do you know that?

256 A. I was conversant with the business.

Q. What corn is it that was not paid for for Mr. Foote?

A. S. G. Hooker was managing the business for S. G. Hooker & Company. Mr. Lincoln never made a transaction on the board of trade while I was with him; never wrote a business letter out of my office, to my knowledge, to a customer. The only thing he was familiar with was swindling people.

Q. Do you know for whom this 30,000 bushels of corn was bought?

A. I do not, from my recollection now.

Q. If it was not Mr. Foot's corn, whose corn was it that was paid for?

A. I couldn't say, for we had corn for various other parties.

Q. Do you know whether there was a purchase of 250 tierces of lard on June 1st on account of Mr. Foote?

A. My recollection is very indistinct, Mr. Jackson. I couldn't tell after 6 or 7 years as to any specific transaction or purchase and sale without the option book.

Q. That amounts to $12,600.62. Do you know whether that was paid for?

A. I couldn't say. I presume not, however.

Q. Do you know from whom it was brought?

A. I couldn't say.

Q. You know nothing about it?

A. At that time?

Q. You know nothing about it now?
A. No; I can't remember so long.
Q. Did you ever examine the books to see what sales and purchases were made on account of Mr. Foote?
A. I used to frequently look at the option book; yes, sir.
257 Q. What does the option book show?
A. Shows purchases and sales and settlements.
Q. That represents all the transactions, does it?
A. Yes, sir.
Q. That is, the purchases and sales that were made for or on account of Mr. Foote?
A. Yes.
Q. Also represents the settlement and deliveries?
A. Yes.
Q. And if any cash was paid?
A. I don't think it would show cash paid.
Q. Why wouldn't it show that?
A. Because that was not the book to enter cash paid.
Q. Would it show by whom the purchases were made?
A. I think so.
Q. And by whom the sales were made?
A. I think so.
Q. And for the various parties?
A. I think so.
Q. Would it show whether the commodity was delivered?
A. I don't know whether it would show whether it was delivered or not.
Q. Would it show whether it was paid for?
A. I don't know.
Q. What would it show?
A. It would show the purchases and sales and the amount and the date of the purchases and the date of the sales.
Q. Would it show the settlement?
A. Yes; I think so. Mr. Jackson, why don't you refer to the
258 option book? You have the option book; the Third National Bank has. I saw it there in that vault. What is the use of your trying to quiz me about that book?
Q. For how long a period did that option book cover?
A. I don't recollect. We should have the option book of the entire transactions made for Mr. Foote; that should be among our books that we turned over to Mr. Pearce.
Q. All the transactions of your firm from the time you commenced till the time you closed?
A. Yes; we should have an option book in the hands of Mr. Pearce that should show all these transactions.
Q. You say you took an account to Mr. Foote showing his indebtedness to your firm of about $12,000 or $13,000?
A. Yes, sir.
Q. When was that account taken to him?
A. After we stopped doing business for him and closed up his account.

Q. In what year was that?
A. My impression is, in 1876.
Q. Was that before or after the accommodation note?
A. After.
Q. Did you have the accommodation note in your possession then?
A. I don't recollect whether it had been taken up and surrendered to him or not.
Q. He had, however, given an accommodation note, had he not?
A. Yes.
Q. How long a time before that?
A. I don't remember.
Q. Was it a month or two months?
A. I couldn't state, Mr. Jackson.
259 Q. Was it a year?
A. I couldn't state.
Q. You say the accommodation note was given prior to this account showing Mr. Foote's indebtedness to the firm of $12,000 or $13,000?
A. Yes.
Q. Where is that account now rendered to Mr. Foote?
A. I couldn't tell you.
Q. Did you give it to Mr. Foote?
A. I did.

Mr. Jackson, counsel for the Third National Bank, calls for the production of the account just referred to.

Q. Was there any settlement made when that account was presented to Mr. Foote at that time?
A. It was a final accounting.
Q. That one of $12,000 or $13,000?
A. Yes, as I understood it after we closed up his business.
Q. Was there no settlement made after that?
A. There was a settlement made after that, while I was in New York, by Mr. Rice.
Q. When was the last settlement made?
A. While I was in New York.
Q. What year was that?
A. Perhaps that same year.
Q. How was this account settled—this account that shows an indebtedness of Mr. Foote to your firm of $12,000 or $13,000?
A. Mr. Rice settled it by giving notes and money.
Q. What notes did he give?
A. Four Couch-estates notes of $5,000 each.
Q. That is, at the time the account of $12,000 or $13,000 was rendered?
260 A. No; afterwards.
Q. I want to know how this was settled.
A. After I went away there was a new account rendered and swelled to $22,000.
Q. What was done under this account of $12,000 or $13,000?

A. I rendered it to Mr. Foote before I went away.

Q. What was done under that?

A. Nothing done up to the time I went away.

Q. No settlement made of that account?

A. Not up to the time I went away to New York. Mr. Lincoln and Mr. Pearce sent me to New York to settle with Fowler Brothers. They would not settle with them.

Q. When was this account of $12,000 or $13,000 rendered to Mr. Foote?

A. A day or two before I went to New York.

Q. When did you go to New York?

A. I should say about two weeks previous to Mr. Foote's paying the Couch-estate notes.

Q. Then you say during that time another account was rendered to Mr. Foote showing the indebtedness of about $22,000?

A. So Mr. Rice tells me. I suppose it was, because he paid $22,000. I suppose there was a different account rendered to him.

Q. You say the account of $12,000 or $13,000 indebtedness was presented to Mr. Foote a short time before you went to New York?

A. Yes.

Q. And what month was it you went to New York?

A. I disremember, Mr. Jackson.

Q. Do you remember whether it was 1875, 1876, or 1877?

A. I think in 1876. It might have been the spring of 1877. It was while we were making these settlements.

261 Q. If it was in 1876, what time of the year was it?

A. It would be very difficult from my memory to remember, because it is 6 years ago. I have a schedule at my house of that identical settlement, every man that we owed, and I carried it with me to New York. That will show the date. I have that at home if you wish to see it. Six or eight parties became suspicious of Mr. Lincoln and would not settle with him, and I had it to do, because they all had sympathy for me and finally did settle with me.

Mr. Jackson, counsel for Third National Bank, calls for the production of the schedule referred to by the witness.

Q. You state upon page 60 of your testimony that Mr. Pearce told Mr. Lincoln, "I think you better send Mr. Hooker to New York. Everybody has sympathy for him. They don't like Mr. Lincoln. They think Mr. Lincoln is not honest, which is the truth." Who told you that Mr. Pearce stated that?

A. Mr. Lincoln told me himself. Said he, I will go and see Mr. Pearce and see what he thinks about it; and he came back and said that.

Q. Did Mr. Lincoln tell you that Mr. Pearce said that they didn't like him; that he was not honest?

A. No; the men told me that—the parties told me so.

Q. You stated here that Mr. Pearce said so.

A. Mr. Pearce told me to go to New York. I don't think Mr. Pearce said Mr. Lincoln was not honest.

Q. To whom did you first state that Mr. Pearce advised your going to New York? When have you made that statement before?
A. I don't know that I have made it before.
Q. Never made it before in any previous examination?
A. I don't recollect that I have.
262 Q. Why haven't you stated it before?
A. Because it has not been drawn out in any examination.
Q. Did Mr. Tenney ever say to you that your brother-in-law and Mr. Lincoln were going to stay in Chicago, and that he and Mr. Lincoln and your brother-in-law were going to fix up the books in some shape so that they could make a showing to the board of trade and get a settlement of 33 cents on the dollar?
A. Mr. Lincoln and Mr. Norton told me that.
Q. Did Mr. Tenney ever state that to you?
A. He said they were going to fix up the books.
Q. Where did Mr. Tenney ever say they were going to fix the books?
A. In our office.
Q. Who was going to fix the books?
A. He and Mr. Lincoln and Mr. Norton.
Q. When did he say that?
A. On Friday night before I left the office.
Q. What Mr. Tenney was that?
A. Dan. K. Tenney.
Q. What month and what year was that statement made by him?
A. It was soon after we failed.
Q. What time was that?
A. The books will show. I don't remember.
Q. Can you tell the year?
A. The same year that I have been stating all along.
Q. What year was that?
A. About 1876.
Q. 1876 or 1877?
A. 1876, I guess.
Q. What month?
263 A. I don't remember. They were going to garble the books so as to make a settlement on the board of trade.
Q. Do you know whether they did garble the books?
A. I know they took two days at it; my brother-in-law told me.
Q. Did you examine the books to see about it?
A. I didn't. I never had anything to do with the books. I had a confidential secretary or clerk, as I supposed—my brother-in-law.
Q. When did you ever make a statement to any one about what Mr. Tenney said he would do?
A. I have told a good many people so.
Q. Have you ever testified to that fact before?
A. I don't think I have.
Q. Why have you not?
A. It was not drawn out. There are a good many other things

about it that could be said if it was necessary. I shall not volunteer very much.

Q. When did you first state that you was satisfied that Mr. Lincoln and Mr. Norton garbled the accounts of your firm?

A. In this examination.

Q. You never stated it before?

A. I think not.

Q. Never testified to it before?

A. I think not.

Q. How many times have you testified altogether in this case?

A. A good many.

Q. About how many times?

A. I couldn't judge. As many as the case has been tried.

Q. Five or six times?

A. Yes, sir.

264 Q. This is the first time you ever mentioned that?

A. Yes. I will tell you where the first intimation of the improper condition of our books ever started from, Mr. Jackson, and that was from my wife to her brother. My wife—we lived together 36 years—charged that boy with corruption in our books, the first that ever was made in the world.

Q. How do you mean with corruption?

A. Charged him with improperly keeping the accounts in Mr. Lincoln's favor and as against me. You go and ask him.

Q. Did Mrs. Hooker ever see the books of your firm?

A. Yes; she saw charges made by Mr. Lincoln or Jim—money charged to her when she and I were away at the seashore—day and date. I presume it went where the same money we paid Dan. Tenney, $1,000, and Tenney paid him back $500 of that. I had the whole thing to pay. It was the most corrupt charge that ever was made by man.

Q. To whom did you first state that the charge of 250 tierces of lard was wrong?

A. I told Mr. Norton so.

Q. At what time?

A. I don't know; the first time I saw it.

Q. Did you ever testify to that fact before?

A. I don't think I did.

Q. Why not?

A. Because it was not drawn out.

Q. Did you ever tell Mr. Lincoln that that charge was wrong?

A. I don't think I did. I never had anything to do with Mr. Lincoln in the office very much.

Q. Did you tell Mr. Foote it was wrong?

A. Yes.

265 Q. Did you tell him, at the time you presented the account to him, that it was wrong?

A. No.

Q. Did you tell him the charge of 30,000 bushels of corn paid for was wrong?

A. No. I was completely broken down and surprised at our fail-

ure and the conduct in the office, and I wanted to get a settlement and get out of it—get fixed up.

Q. You say the note of $15,000, the accommodation note, was given to you personally, do you?

A. No; I think not.

Q. To whom was it handed to?

A. It was given on my account. I went to Mr. Foote and got him to give it, then I think he came to the office and the note was given in the office.

Q. You say that was afterwards given to the Third National Bank as collateral security?

A. I think so.

Q. Don't you know whether it was or not?

A. As I generally do our business.

Q. Did you take it to the Third National Bank?

A. I don't remember whether I took it or my brother-in-law took it.

Q. What was the date of the note?

A. I don't remember.

Q. Can you give the year?

A. Only indefinitely.

Q. Give it as well as you can.

A. I should say it was early in 1876, perhaps late in 1875.

Q. Did your firm ever pay any money to Mr. Foote?

266 A. I think so.

Q. What for, from what source?

A. Differences on option trades.

Q. Did he ever pay that money back to the firm?

A. Not that I know of. He paid it back by giving us $22,000 in the final settlement. I think that is pretty good pay.

Q. You say that you never called upon Mr. Foote for margins?

A. I never did.

Q. Do you remember, in your testimony in the case of Pearce against Foote, saying "we called on him once or twice," referring to margins?

A. I think when I said we—I think Mr. Lincoln sent Mr. Geitmacher to him once or twice for margins.

Q. Do you know that fact?

A. Yes; I know that he had sent him there two or three times, once or twice.

Q. Did Mr. Lincoln ever state to you that at one time there was some corn maturing for Mr. Foote?

A. We frequently spoke of contracts maturing, that they should be sold before delivery; but, as a rule, Mr. Lincoln didn't know any more about our business—the executive business of the office—as though he was not a member of the firm, because his time was wholly devoted to the settlement of the business of Munn, Norton & Scott.

Q. Do you know whether these parties with whom you dealt on account of Mr. Foote knew of the understanding which you say existed between you and Mr. Foote?

A. I don't know.

Q. You never told them?

A. No.

267 Q. The purchases and sales that you made for Mr. Foote were the same as you made for other customers so far as these parties with whom you traded were concerned?

A. Yes, sir.

Q. Were any of the trades made on account of Mr. Foote—made between your firm and Mr. Foote?

A. I am inclined to think they were; yes, sir. I am inclined to think that Mr. Lincoln and Mr. Norton took a good many of the trades, and never were made on the board of trade for Mr. Foote.

Q. You don't know as a matter of fact?

A. Except in a general way.

Q. You don't know of your own knowledge?

A. Do not know any identically, except the increased indebtedness of Mr. Foote. I can only see how it could have been done in that way by an artificial trade.

Q. If there were any such trades of that kind would the option book show?

A. No, sir.

Q. That would have to be by some secret arrangement, then?

A. Yes; there was a good deal of it in our office about that time—a good deal of it.

Q. Did you say that Mr. Norton was a partner of Mr. Lincoln, your brother-in-law?

A. I think so; yes, sir; has been always.

Q. You say always has been?

A. I think so. They have been together, at any rate, ever since our failure and separation.

Q. You don't know whether he is a partner or not, do you?

A. No.

268 Q. Did you ever have a contract on the board of trade with any one with the condition in it that there should be no delivery of the article bought or sold?

A. I think not. That is a remarkably silly question. I think not; don't think it was ever done.

Q. You never had a contract of any kind with the condition in it that there should be no delivery?

A. I think not.

By agreement of counsel the taking of further testimony in this case is adjourned to Friday, July 3rd, 1885, at 2 o'clock p. m.

269 JULY 8TH, 1885.

GEORGE A. HOOK, being first duly sworn, testified on behalf of James H. Rice and Ira Foote as follows:

Q. Where do you reside?

A. Number 1200 Langley avenue, Hyde Park.

Q. How long have you been a resident of this city or Hyde Park?

A. About 16 years.

Q. What is your business now?
A. Deputy sheriff.
Q. How long have you been deputy sheriff?
A. Since 1882.
Q. Are you acquainted with Ira Foote, one of the parties in this action?
A. Yes, sir.
Q. How long have you known him?
A. Have known him 15 years.
Q. State whether you have known him intimately or otherwise.
A. I was in the firm with him three or four years. Yes; he and Mr. Rice, before the Chicago fire.
Q. Do you know Stephen G. Hooker?
A. Yes, sir.
Q. How long have you known him?
A. I should think about 10 or 12 years.
Q. What business was Mr. Hooker engaged in when you first knew him?
A. I don't know what he was at first; he used to be a contractor—carpenter at one time—I think, when I first knew him; afterwards he was in the commission business.
Q. What kind of commission business—what was the character of the business?
270 A. Board of trade, grain.
Q. With what firm was he connected, if any?
A. S. G. Hooker & Company. A man by the name of Lincoln was his partner.
Q. George D. Lincoln?
A. I am not certain about that.
Q. You say you were connected with Mr. Foote in business. State how, in what capacity.
A. I was the time-keeper and paymaster during the building of Chicago after the fire.
Q. For whom?
A. Foote & Rice.
Q. Where were you employed or what were you doing in the fall of 1884?
A. I was at the Tremont house.
Q. Where did Mr. Foote reside at that time?
A. He boarded at the Tremont house.
Q. State whether your acquaintance with Mr. Foote at that time was intimate or otherwise.
A. I saw him every day—half a dozen times a day.
Q. Did you know of Mr. Foote's having any speculations or trading with a man by the name of Adams on the Chicago Board of Trade?
A. Yes, sir; George W. Adams.
Q. You may state very briefly what you know about it.
A. He did some dealing on the board for Mr. Foote, I think, in oats, possibly something else—other kinds of grain.
Q. Mr. Adams did?

A. Yes, sir.

Q. Did that lead to any misunderstanding or difficulty, to
271 your knowledge?

A. Yes; it did.

Q. Did you hear any conversation between Mr. Foote and Mr. Hooker, at the Tremont house, in relation to the transactions that Mr. Foote had with Mr. Adams?

A. Yes, sir.

Q. State as near as you can recollect what conversation you heard.

A. In settling up his affairs and grain deals with Mr. Adams they had some dispute about the settlements. Mr. Foote, I believe, thought that Mr. Adams had not done just right, and he sent for Mr. Hooker, or Mr. Hooker came to see him, and he told Mr. Hooker that he wanted him to go and settle up that matter with Mr. Adams.

Q. Who told Mr. Hooker?

A. Mr. Foote, as he was better posted about that business than he was.

Q. Did you hear any further conversation between Mr. Hooker and Mr. Foote at that time in relation to any business between themselves?

A. Mr. Hooker told Mr. Foote that if he wanted to do any dealing to let him do it, as he had known him for years, and I think they used to be in company together. Mr. Hooker says, Whatever I do with you you will know it is done right. Let me do your dealing for you on the board of trade. I am having large deals for Canada people, and when I have a large order I could out you in ahead of the rest of them and make you some money.

Q. What did Mr. Foote say to that proposition, if anything?

A. Mr. Foote agreed that he should go on and do business
272 with him, and he told him that he couldn't draw any money out of the firm. He wanted what dealing he did to be done quickly. He wanted to do option dealing. If anything was coming to him he wanted it, and if it went the other way to settle it up then.

Q. What did Mr. Foote say in relation to his ability to draw any money for the purpose of paying for grain?

A. He said he couldn't draw any money; didn't want any cash grain bought, but any differences there might be at the end of their option deals that he would settle it if against him, and if for him he wanted it.

Q. What was said either by Mr. Hooker or by Mr. Foote in relation to receiving or paying for any actual grain?

A. No actual grain to be bought or delivered; only option deals.

Q. State whether there was anything said about there being any grain paid for at any time.

A. None to be paid for; not to have any; to settle the differences, as they called it. If they bought grain one month for the next month it could be closed out before the 30 or 60 days.

Q. Settled before the maturity?

A. Yes; before the maturity of the contract.

Q. You say Mr. Foote made this statement of how he wanted to deal on the board of trade?

A. Yes, sir.

Q. In reply to that what did Mr. Hooker say?

A. He said that was the way he would take his business. The question came up how to settle the deals, and he said they formed what they called a ring. 20 or 30 get together and change off from one to another and close out the deals. No actual grain delivered. He didn't want any cash grain, or lard either.

273 Q. Or pork?

A. I don't know about pork; corn and lard and wheat; he had large deals in lard, I think.

Q. Who had?

A. Mr. Hooker said he was making big deals for the Canada people—one of the largest dealer- in the business in lard; I think corn, too.

Q. Can you recollect what Mr. Hooker said to Mr. Foote more particularly with relation to how he would place Mr. Foote's trades when he had large orders for corn and lard that he was receiving from Canada and Buffalo?

A. Put them in ahead; go and buy Mr. Foote's options before he put in his large orders that he got from Canada.

Q. Do you remember what Mr. Hooker said, if anything, in relation to the object of that?

A. Because, when he commenced buying large orders, he said it didn't take but a short time to get orders now, and it would go up, but he would put Mr. Foote's orders in before he put the large orders.

Q. Mr. Foote's orders?

A. Yes, sir.

Q. That forced the market down?

A. Yes, sir.

Q. Was anything said in relation to margins, that you recollect?

A. No; I don't know anything about margins; didn't ask for any that I know of; don't think they did.

Q. What do you know after this conversation about which you have testified in relation to any talk between Mr. Foote and Mr. Hooker in relation to their trades during 1874, 1875, and 1876?

274 A. They used to be in there every day. Mr. Hooker came there two or three times a week, and dined with Mr. Foote, and he always came into the wine-room to get a drink before he went up to dinner. I had charge of the wine department at that time, and he used to go and sit down and have wine before he went up to dinner. It is a long time ago, and it is hard for me to remember everything that took place; he used to be in Mr. Foote's room frequently.

Cross-examination.

By Col. JACKSON:

Q. Mr. Foote boarded there, did he?

A. Yes; he boarded there. He built the Tremont house; that was the last contract we had. We got through then building, and I went to work for Mr. Couch.

Q. When did the conversation between Mr. Foote and Mr. Hooker take place?

A. I should think it was the latter part of 1874 or 1875.

Q. Where did it take place?

A. In the wine-room, at the end of the bar.

Q. Who was there at the time besides you and Mr. Foote?

A. A couple of barkeepers; I don't remember their names.

Q. Do you know where they are?

A. One is dead—Robery Hamlin; he was there a long time; the other I don't remember. This was off in the wine-room, separate from the bar.

Q. Where is George W. Adams?

A. I think he is in Chicago somewhere; I don't know where; don't think he is on the board of trade. He is a lame man.

275 Q. Did you personally know of the transaction between Mr. Adams and Mr. Foote?

A. Just the same as between Mr. Hooker and them. He boarded there, too, and his wife, and I used to hear about it, same as I did about Mr. Hooker.

Q. You personally didn't know what Mr. Adams did for Mr. Foote, did you?

A. I knew he dealt with a large number of bushels of oats. He was called then a big oats man of the board of trade, the biggest there was then, I understood, and failed there afterwards.

Q. Did you personally know about the deals and purchases made by S. G. Hooker & Company for Mr. Foote?

A. Not particularly. He would bring in bills and sit down there, and I would hear them talk about it.

Q. You didn't know what Mr. Hooker did on the board of trade at all?

A. Of course I was not on the board of trade; only know what he told him in regard to the option deals.

Q. Did Mr. Hooker ever report to Mr. Foote of the purchases and deals that were made on account of Mr. Foote?

A. Yes, sir.

Q. How often would he do that?

A. When he would come in for dinner, on his way to the dining-room.

Q. Did he report to you ever?

A. Sometimes he reported to me; sometimes leave a little slip of paper to give to Mr. Foote.

Q. You say Mr. Foote was a member of the firm of Rice & Foote?

A. Yes, sir; Foote & Rice was the name of the firm at that time.

276 Q. How long were they together?

A. Twenty or twenty-five years.

Q. Before that?

A. Probably 15 or 20 years before that.

Q. When did they dissolve?

A. I don't know that.

Q. They are not together now, are they?

A. No; they have gone out of the contracting business. They came here in 1854.

Q. Do you know when they separated?

A. No; I do not.

Q. In this conversation between Mr. Hooker and Mr. Foote did Mr. Hooker say anything about differences?

A. Yes, sir.

Q. What did he say?

A. Mr. Foote asked him how he settled this, and he told about forming a ring of 20 or 30 men and hand it from one to another, and settle that way, by paying differences.

Q. What did he say?

A. He asked in regard to the differences, and he told him the same about the ring, 20 or 30 men get together, and it would go around and finally land on some one and change off, but they would settle by paying the differences on one side or the other.

Q. Twenty or thirty men get together?

A. I think he said that—formed a ring of sometimes 20 or 30—made a ring on the board. I remember that distinctly.

Q. Did Mr. Foote at this conversation say anything about not having money to buy cash grain?

277 A. Yes; he said he couldn't draw any money out of the firm. Mr. Hooker said didn't need cash grain, but to buy on options from month to month.

Q. What did he say about option deals?

A. Option deals was the way he was going to buy grain for him.

Q. But what did he say about option deals?

A. From month to month.

Q. What do you mean by that?

A. Option deals; I don't know about that.

Q. You don't know what he meant by option deals?

A. No; not particularly; buying and closing out; before it came due turn it over to somebody else. If he paid 80 cents and it got to be 85, settle the difference of 5 cents; if the other *other* way, to pay that.

Q. How many times have you testified in reference to these matters?

A. Twice, I guess. Once in this court and, I think, once over on La Salle street.

Q. Do you remember whether you have ever testified before to the fact, as you state, that Mr. Hooker said that he would purchase on account of Mr. Foote before he would for the Canada parties?

A. Yes, sir; as I have just stated.

Q. Do you remember whether you ever testified to that before?

A. No; I don't remember. I know that was one of the big features going to make money and get ahead of the Canada people.

Q. You don't remember whether you did in previous examination?

A. No; I do not.

Col. Jackson asks for the production of the notes of $13,000 and the statement of account given to Mr. Foote, the same that
278 Mr. Rice had in the case of Foote against Pearce in the circuit court of Cook county, which was there marked Exhibit C.

It is agreed by counsel that the rules of the board of trade shall be considered in evidence—that is, the rules and regulations of the board of trade then in force, in 1874, 1875, and 1876.

By agreement of counsel the taking of further testimony in this case is adjourned to Tuesday, July 14th, 1885, at 2 o'clock p. m.

279 JULY 14TH, 1885.

HENRY H. KINNEY, being first duly sworn, testified as follows on behalf of James H. Rice and Ira Foote:

Q. Where do you reside?

A. Chicago.

Q. How long have you resided there?

A. Twenty-five or twenty-seven years; about 26 years.

Q. Are you acquainted with Ira Foote?

A. Yes, sir.

Q. How long have you known him?

A. Fifteen or eighteen years.

Q. Are you acquainted with James H. Rice?

A. Yes, sir.

Q. How long have you known him?

A. Same length of time.

Q. State generally how well you have known Mr. Foote and Mr. Rice and what business connections you have had with them, if any.

A. They were contractors and builders; built the Tremont house and lived there. I sat at the same table with them for 5 years.

Q. Do you know J. Irving Pearce?

A. Yes, sir.

Q. How long have you known him?

A. Ever since 1862 or 1863.

Q. State whether or not you had any occasion to speak to Mr. Pearce at any time with reference to certain notes made by the trustees of the Ira Couch estate to Ira Foote—if you had any occasion to speak to Mr. Pearce about them.

A. In December, 1876, I think it was, Mr. Foote asked me
280 to go and see Mr. Pearce at the Third National bank and ask him if he had any notes of the Couch estate. I went, I think, from Roddin & Hamilton's, at the corner of Washington and

State street-. Mr. Foot was in there buying a watch to send East to his niece for a Christmas present. He asked me to go to Mr. Pearce and ask him if he had any such notes or knew anything about them.

Q. Did Mr. Foote say anything to you as to — the object of his inquiry was—what was he about to do, if anything?

A. I don't know that he did say anything about that; I don't remember.

Q. You say Mr. Foote asked you to go to Mr. Pearce?

A. Yes, sir.

Q. How near Christmas, 1876, was this?

A. I couldn't state the date; just before the holidays; probably 3, 4, or 5 days.

Q. Before the 25th of December, 1876?

A. Yes, sir. I know Mr. Foote wanted to send this watch East to his neice and wanted it to get there Christmas eve.

Q. You may state again, as nearly as you can, what Mr. Foote requested you to do.

A. He simply asked me to go and see Mr. Pearce, president of the Third National bank, and ask him if he had any such notes of the Couch estate. I went there, saw Mr. Pearce, and asked about them.

Q. You may go on and state what you did pursuant to such request—what conversation you had with Mr. Pearce, if any, and what Mr. Pearce said to you.

A. I went and saw Mr. Pearce and asked him if he had any such notes. He said he had not; furthermore, that he didn't know
281 anything about such notes.

Q. You say "any such notes." State what notes.

A. Notes of the Couch estate.

Q. You say he said he had not. Did you state whether he or the Third National bank?

A. The Third National bank; yes, sir. He got up and went into the office; I don't know whether he saw Mr. Parsons or who he saw.

Q. Where were you when Mr. Pearce went into the main banking office?

A. In his private office, in the back end of the bank.

Q. You waited there?

A. Yes, sir.

Q. And what did Mr. Pearce say after he went into the main banking office of the Third National bank and came back to his private office?

A. Said they had no such notes.

Q. And by "such notes" you mean notes made by the trustees of the Couch estate?

A. Yes, sir; I had to name them when I made my remark to him.

Q. Did you have a subsequent conversation with Mr. Pearce about these notes?

A. Mr. Pearce stopped me on the street some time afterward, I can't tell exactly whether one, two, or three weeks, and asked me

what there was about those notes, and I told him I didn't know anything about it; I was simply sent there on an errand.

Q. He asked what about the notes?

A. Yes, sir; about the notes I had inquired of him about.

Q. Where on the street?

A. I think on Dearborn between Randolph and Washington; I am not positive; there in the neighborhood of the bank.

282 Q. Did you have any other conversation with him at that time?

A. No, sir.

Q. Did you ever have any other conversation with Mr. Pearce at any other time about those notes?

A. No; I think not.

Cross-examination.

By Mr. JACKSON:

Q. What time was it you had this conversation with Mr. Pearce; what year?

A. 1876, I think, in December, just before Christmas. The day I am not positive about, because he asked me to go down to the jewelry store with him to buy a watch to send East to his niece—niece or nephew; I don't know which; I think it was a lady's watch—and while there he asked me to go over to the Third National bank and see Mr. Pearce about these notes, and he waited for me until I returned there.

Q. How do you remember the year?

A. I have got a little memorandum book in which I put down dates and things I do, to remember.

Q. Have you referred to it in this connection?

A. Yes, sir.

Q. What time of the day was it you had this conversation with Mr. Foote?

A. That I couldn't tell; whether after dinner or before I couldn't say; as far as that is concerned, my impression is it was about noon, because I generally don't leave the store until about 12 o'clock to assist other people.

Q. Where did you have the conversation with Mr. Foote?

283 A. At Roddin & Hamilton's jewelry store, where Giles is now.

Q. Were you there at the time?

A. With Mr. Foote?

Q. Yes.

A. Yes, sir; helping him select the watch.

Q. Where had you gone from; where did Mr. Foote first see you?

A. I don't remember whether I went to his store, on Adams street, or whether I had an engagement to meet him; I can't tell. I presume I went to the store on Adams street, James H. Rice & Company.

Q. While you were there at this store you say this conversation took place?

A. Yes, sir.
Q. How many days was it before Christmas?
A. I couldn't say exactly.
Q. Was it a week?
A. I judge it was three or four days. I remember that Mr. Foote said I must get this watch off to-morrow or it will not get there Christmas eve. He sent it to New York State—I have forgotten the town—to a relative of his.
Q. You think it was not more than 3 or 4 days?
A. I think not.
Q. And on that same day you saw Mr. Pearce?
A. I went direct from there to the Third National bank, to the private door on Washington street, and saw Mr. Pearce.
Q. Was that all that Mr. Foote asked you to do, simply go and ask him whether he had the notes?
A. Yes, sir.
Q. Did he describe the notes?
A. Yes, sir; Couch-estate notes.
284 Q. Did he state how many there were?
A. Don't think he did.
Q. Did he state the amount?
A. I think not.
Q. Did he state whether he had any connection with the notes?
A. I think not.
Q. Just simply asked you——
A. That favor; that kindness.
Q. Did you know anything about the Couch-estate notes; that there were notes of that character?
A. Yes, sir.
Q. Did you know that he had them?
A. I did not; no, sir.
Q. Did he say he had any notes?
A. Said he did not.
Q. He said he didn't have any notes?
A. No, sir; he said the Third National bank did not have any notes.
Q. I am asking you what Mr. Foote said.
A. I misunderstood you.
Q. What did Mr. Foote say with reference to the Couch-estate notes?
A. Nothing about it at all; simply asked me to go to Mr. Pearce and ask him if he had these notes.
Q. Did he state the object of his inquiry?
A. No, sir.
Q. Whether he was interested in the notes in any way?
A. No, sir.
Q. Did he state what was the amount of the notes?
A. No, sir.
Q. Just simply asked you the bald question to go over and ask Mr. Pearce?
285 A. Yes, sir.

Q. Did you ask Mr. Pearce any reason?
A. He didn't give any reason—why should I ask him?
Q. Did you ask Mr. Foote why he wanted to know about the Couch-estate notes?
A. No, sir; I did not.
Q. After he asked you to go and see Mr. Pearce about the Couch-estate notes you went over and asked Mr. Pearce?
A. Yes, sir; I did.
Q. What time of the day was it you saw Mr. Pearce?
A. When I asked him about these notes?
Q. Yes.
A. As I say, I think it was about noon. I don't generally leave before then to attend to other people's business.
Q. Did you go back to your place of business from Roddin's and Hamilton's?
A. I think so; yes, sir. I may have been delayed from half to to three-quarters of an hour; couldn't tell exactly.
Q. Where did you have the conversation with Mr. Pearce?
A. In the private office of the Third National bank, entrance on Washington street; went in the private door.
Q. Private door on Washington street?
A. Yes, sir; you know where it is and so do I; it is there still, I guess. I am not positive about it.
Q. What office do you refer to as being there still?
A. The banking building and the offices are the same now, are they not?
Q. You don't mean the office of the Third National bank is there still?
A. No; but of another bank.
286 Q. Who was present in this private office at that time?
A. No one.
Q. Only Mr. Pearce?
A. No one but Mr. Pearce and myself.
Q. What did you ask Mr. Pearce?
A. I asked him just as I have stated, if he had any of those notes of the Couch estate. He said he had not, and didn't know anything about them at all. In a few minutes he got up and went into the office. I don't know who he saw, whether Mr. Parsons or Mr. Smith, but he came back and said he had no such notes and didn't know anything about them.
Q. Did you describe the notes to him?
A. Notes of the Couch estate? Yes, sir.
Q. Did you say who they were signed by?
A. No, sir.
Q. Did you know who they were signed by?
A. No, sir.
Q. Did you know who they were signed by?
A. No, sir.
Q. Did you know whether there were any such notes in existance?
A. Couch-estate notes?
Q. Yes.

A. Yes, sir.
Q. How did you know there were any such notes in existance?
A. I knew that Mr. Foote and Mr. Rice had Couch-estate notes for work they did on the house.
Q. Did you ever see them?
A. I didn't know it. I only knew from what Mr. Foote and Mr. Rice had told me.
Q. That they had notes?
A. Yes, sir.
287 Q. Foote and Rice?
A. Yes, sir.
Q. Both of them?
A. I can't swear that Mr. Rice ever told me any such thing; don't think he ever did. Mr. Foote had.
Q. Did you know whether Mr. Rice had any notes?
A. No, sir.
Q. Was Mr. Rice interested in these notes of Mr. Foote's?
A. Not that I know of.
Q. Did you know that Mr. Foote had any notes?
A. Of the Couch estate?
Q. Yes.
A. I know that he told me he had.
Q. When did he tell you he had?
A. That is a question I couldn't answer.
Q. Was it before or subsequent to this conversation?
A. Certainly must have been before.
Q. Did Mr. Foote ask you to ask Mr. Pearce whether he had the Couch-estate notes that he, Foote, had?
A. No, sir.
Q. What notes did he mean, then?
A. He meant the Couch-estate notes.
Q. Notes that had been given to him, Foote, or to others?
A. I couldn't answer.
Q. You don't know what notes they were?
A. I know Couch-estate notes.
Q. You don't know who owned the notes; whether Mr. Foote or some other person?
A. I couldn't answer that question.
Q. You don't know, then?
288 A. I knew that Mr. Foote had the Couch-estate notes.
Q. Did you know whether the notes that he referred to at this time were the notes which you say that he had, or some other notes?
A. I don't know what he referred to at that time—no, sir.
Q. You don't know what notes he referred to other than Couch-estate notes?
A. The Couch-estate notes; I do not.
Q. Do you know the amount of these notes?
A. No, sir.
Q. Know the dates of these notes?
A. No, sir.

Q. Know who they were signed by?

A. No, sir.

Q. Did you know whether they were notes which had been given to some other party?

A. No, sir.

Q. When you had this conversation with Mr. Pearce how did you describe these notes? Did you say anything further than the Couch-estate notes?

A. That is all.

Q. What did Mr. Pearce say?

A. He said he didn't know anything about any such notes or had any such notes in the bank, and to make it more thorough he went out, and either say Mr. Parsons or Mr. Smith, I don't know which—they were both there at the time, I think, and came back and said they had no such notes.

Q. Who said so?

A. J. Irving Pearce.

Q. He said that? Who said they had no such notes?

289 A. He said so himself.

Q. You didn't hear what Mr. Smith or Mr. Parsons said?

A. No, sir; I don't know anything about that.

Q. Do you know whether Mr. Parsons was in the office at that time?

A. I do not.

Q. Do you know whether Mr. Smith was in the office at that time?

A. I do not.

Q. You don't know whether he had any conversation with either of them?

A. Don't know that he had any conversation with any one, but he spoke the same piece over when he came back that he did before he went out.

Q. Do you know what Mr. Foote did with these notes that you say he had from the Couch estate?

A. No, sir; I do not.

Q. You say that Mr. Foote waited for you at the store of Roddin and Hamilton until you returned?

A. Yes, sir.

Q. How long were you away from Roddin and Hamilton's store?

A. That is a hard question to answer; probably 20 or 30 minutes; not over that; it is only a block and a half or two blocks to the bank.

Q. You say there was no conversation prior to this request of Mr. Foote's to you to call upon Mr. Pearce with reference to the Couch-estate notes?

A. No, sir.

Q. He did not state the object or the purpose for which he desired this inquiry to be made?

A. Simply asked me to ascertain whether Mr. Pearce had any such notes.

290 Q. What did Mr. Foote say to you upon your return?

A. I couldn't answer that. I don't think there was anything said; I don't remember.

Q. What did you say to him?

A. Said to him simply that Mr. Pearce said he had no notes of the Couch estate or anything of the kind.

Q. When did you next have conversation with Mr. Pearce?

A. I couldn't say; I couldn't tell whether one week or 3. All I now remember is, he stopped me on the street and asked me what there was about these notes, and I simply said to him, I don't know anything about it. I couldn't tell whether it was one week or three.

Q. That was all the conversation you had?

A. I think so; yes, sir.

Redirect examination:

Q. You have spoken in your cross-examination about J. Irving Pearce leaving the private office of the Third National bank and going into the main banking room and inquiring of Mr. Parsons or Mr. Smith. You may state what position Mr. Parsons held in the Third National bank at that time.

A. He was cashier.

Q. And who was Mr. Smith, and what position did he hold?

A. I couldn't say whether Mr. Smith was assistant cashier at that time or not; he was after that; at least he was in the bank at that time, but whether he was assistant cashier or not I don't know.

Q. And Mr. Parsons and Mr. Smith, where did they have their offices, desks?

291 A. Outside of the president's office.

Q. In the main banking room?

A. There were two doors—one from the inside and one from the outside—leading in there.

Q. You were also asked in your cross-examination what you did after you left Roddin and Hamilton's jewelry store. Can you state what you did after you had done the errand and left Mr. Foote?

A. I couldn't swear to it; I couldn't tell. I may have gone direct to my place of business, and may not.

Q. You say Mr. Foote remained at Roddin and Hamilton's jewelry store?

A. That I couldn't say. I think I parted with him.

Q. I mean while you were gone to do this errand.

A. He was to wait there for me.

Q. He did wait?

A. Yes, sir. He was paying for the watch when I left.

Q. And remained there till you came back from the Third National bank?

A. Yes, sir. I simply went there as a errand boy.

292 JULY 14TH, 1885.

JAMES H. RICE, being first duly sworn, testified as follows on behalf of James H. Rice and Ira Foote:

Q. State your full name.
A. James H. Rice.
Q. Are you the complainant in the cross-bill in this case?
A. I believe so; yes, sir.
Q. Where do you reside?
A. Chicago.
Q. How long have you resided in Chicago?
A. Since 1854; July 8th, 1854, I came here.
Q. How long have you known Ira Foote?
A. Thirty-five years.
Q. Where did you first know him; where was he and where were you when you first knew him?
A. Tompkins county, State of New York.
Q. What was his business?
A. Builder.
Q. What has been Mr. Foote's business from that time to the present, so far as he has been engaged in any business?
A. Builder—contractor and builder.
Q. Do you know when Mr. Foote first came to Chicago?
A. 8th of July, 1854.
Q. Came here with you?
A. First time we came here to settle.
Q. Was he interested in business with yourself at that time?
A. Not at that time; no, sir.
293 Q. Did he become so soon after coming here?
A. Yes, sir.
Q. And how long did he remain or continue in business with you, Mr. Rice, and what business?
A. Contracting for buildings, erection of buildings. I think the last building we did was in 1874.
Q. What was it?
A. The Tremont house was the last principal building; some small buildings afterwards.
Q. Did Mr. Foote continue in business with you after that period; if so, in what business, and how long?
A. After we left the building business I went into the glass business. The firm was James H. Rice, but Mr. Foote had an interest with me until, I think, 1879; that is the year he went out.
Q. Before that what had Mr. Foote been doing, if anything?
A. Not anything; no active business.
Q. You may state whether Mr. Foote was engaged in the contracting and building business from 1854 until 1874.
A. I think it was about 1874 he went out. He commenced building as soon as he came here.
Q. Was Mr. Foote engaged in any other business during that time except the building and the glass business with you?
A. No active business; no legitimate business that I know of.

Q. I will ask of you, Mr. Rice, if Mr. Foote has assigned to you his interest in the two notes which were turned out to the firm of S. G. Hooker & Company in 1876.

A. Yes, sir.

Q. Are you the owner of those two notes at the present time?

A. Yes, sir.

294 Q. When did you first have any knowledge that Mr. Foote was engaged in speculating upon the Chicago Board of Trade?

A. Probably about 1875.

Q. Prior to 1875, to your knowledge, did Mr. Foote ever have any experience in trading upon the Chicago Board of Trade or in any kind of grain or commission business?

A. No, sir; I never heard of it. The first knowledge I had of any thing of the kind, I think, was in 1875; a deal he had with a man by the name of Adams.

Q. A commission merchant on the board of trade was Mr. Adams—Chicago Board of Trade?

A. I believe so.

Q. If Mr. Foote ever had any experience on the Chicago Board of Trade prior to that time or any information concerning the manner of doing business, so far as you know, state what it was.

A. None as far as I know.

Q. Did Mr. Foote have any money in 1875 and 1876, any ready money that he could use in buying and selling grain, to your knowledge?

A. No, sir; not to my knowledge.

Q. You may state what information you obtained about any speculations of his with S. G. Hooker & Company and when such information came to you.

A. In 1876, I think about the first of June, Mr. Foote came to me and told me that he had been speculating upon the board of trade and that he was a considerable loser; was considerably broken up about it and he wanted to go away, and he requested me to go and settle up the losses that he had made, the accounts that he owed.

Q. Did he tell you with whom he had been speculating?

295 A. Yes, sir; he told me he had been speculating with S. G. Hooker & Company.

Q. Go on and give the facts in relation to the conversation you had with Mr. Foote and your settlement.

A. I asked him how much he had lost, and he said a large amount. He showed me a bill of S. G. Hooker & Company, which, I think, amounted to about $20,000. He also said he was owing the Union Trust Company quite a large amount and the Illinois Saving- and Trust Company a large amount.

Q. Illinois Trust and Savings bank?

A. Yes; that is it. Before he went away he gave me a power of attorney to settle up these matters, and also the accounts of the different amounts that he owed to these different institutions, and I went immediately and arranged with the banks for the amounts that he owed them, and had several conferences with regard to his

account with S. G. Hooker & Company. Soon after Mr. Foote went away they put another item on the bill, which made it amount to something over $22,000. I had considerable correspondence with Mr. Foote in regard to it. I finally arranged to settle up with S. G. Hooker & Company by turning out $20,000—four $5,000 notes given by the Couch estate—and paying the balance in money.

Q. You say you arranged to turn out the four notes of $5,000 each, made by the trustees of the Couch estate?

A. Yes, sir.

Q. Can you state when those four notes were dated?

A. I closed the settlement with them on the 29th day of June, 1876. The notes may have been given that day or the day before, but not many days. I had arranged for them to take the
296 notes, and then went to the Couch estate and got the notes, payable to the order of Ira Foote, perhaps a day or two before.

Q. What were those notes given to Mr. Foote for—what consideration?

A. They were owing us a large amount on our contract for the Tremont house.

Q. And these notes were going to Mr. Foote, were they, on account of that building?

A. Yes, sir; the notes were given payable to his order.

Q. The back of these notes bear the guarantee of Mr. Foote. State what you know about that.

A. I endorsed the notes, guaranteeing them as attorney-in-fact for Mr. Foote.

Q. How much money in addition to these four $5,000 notes did you pay to S. G. Hooker & Company at that time, and when did you pay it, and how?

A. Paid in cash, giving my check for it on the 29th day of June, I think, 1876.

Q. Have you got that check or a copy of it in your possession?

A. Yes, sir; I have a copy of it.

Q. Please produce it, and hand it to the master and have it marked Exhibit A to your deposition.

A. Check dated June 29th, payable to S. G. Hooker & Company or order, $2,165.72. That is a copy of the original check.

(Check is produced and marked Exhibit A.)

Q. Did you take a receipted bill from S. G. Hooker & Company at the time you turned out these four notes of $5,000 each and gave them the check?

A. Yes, sir.

297 Q. Do you know what became of that bill?

A. The last I saw of the bill it was in Judge McAllister's court.

Q. For what purpose was it there?

A. It was taken there in the case of Tenney against Foote.

Q. Put in evidence in that case?

A. Yes, sir.

Q. Have you had it in your possession since?
A. No, sir.
Q. You also spoke of a bill made out against Mr. Foote by S. G. Hooker & Company for a less amount than the one you finally settled upon. Do you know what has become of that bill?
A. No, sir, I do not.
Q. Have you such a bill in your possession?
A. No, sir.
Q. Was there any note for $16,000, made by Mr. Foote to S. G. Hooker & Company, turned over to you at the time you made this settlement?
A. Yes; they delivered up the note.
Q. Do you know where that note is?
A. I do not.
Q. Have you got such a note in your possession?
A. No, sir; not in my possession.
Q. Where was Mr. Foote at the time you turned out these four $5,000 notes of the Couch estate and gave this check which was just put in evidence?
A. Camden, Cayuga county, New York.
Q. What was the condition of his health at that time?
A. I don't know exactly what it was at that time; he was pretty well broken up when he went away.
298 Q. He had not been gone very long, had he?
A. Probably three or four weeks; it was some time before I settled up the matter after he went away.
Q. Do you remember of an injunction being issued from the superior court of Cook county in the suit of Ira Foote against S. G. Hooker, George D. Lincoln, and J. Irving Pearce and others, in the month of January, 1877?
A. Yes, sir.
Q. Do you remember the time that such injunction was issued?
A. I think about the 10th or 12th of January.
Q. Did you know of the fact at the time it was issued?
A. Yes, sir; knew all about it.
Q. You may state from your own knowledge what such injunction was for, what it was.
A. It was to restrain them from collecting the notes or using them in any way, disposing of them. The estate, I think, was enjoined from paying them.
Q. Do you know what attorney procured such injunction for Mr. Foote?
A. George W. Kretsinger.
Q. Did you have any conversation with Mr. Pearce in relation to any of these four notes which you turned out to S. G. Hooker & Company in July, 1876, about the time that said injunction was sued out, and, if so, when, with reference to the suing out of said injunction, and what conversation did you have with Mr. Pearce?
A. Directly after this injunction was served I was going to Tom Andrews's to get my lunch. As I got along by the Third National bank Mr. Pearce came out and we walked along down to the res-

taurant and I asked him to go in and get lunch with me.
299 We went in and sat down and he commenced on me about that injunction that had been served upon him, and he thought it especially severe that an injunction had been served upon his wife in regard to the Couch-estate notes, as he said he knew nothing about the notes, he had not the notes and he knew nothing about them, and he didn't see why he should be bothered about it. He seemed to be particularly anxious about Mrs. Pearce being served by an officer.

Q. Did he say anything in relation to the Third National bank at that time?

A. He stated that he knew nothing about any such notes at all—had no such notes.

Q. What position did he hold at that time in the Third National bank?

A. I think he was president.

Q. And had been for some years prior thereto?

A. Yes, sir.

Q. And did he remain so up to the time said bank suspended?

A. I believe so.

Q. What direction was the Third National bank with reference to Andrews's restaurant, to which you were going at that time?

A. Nearly a block south.

Q. On the same street?

A. Yes, sir. The bank, I think, was on the corner of Washington and Dearborn; the restaurant was nearly a block farther north.

Q. Did you have any other conversation with Mr. Pearce with relation to those notes?

A. Yes, sir.

Q. With relation to the Third National bank owning them at or near that time?

300 A. I think not at that time; had several conversations with him some time afterward.

Q. Did you have any conversation with him with reference to the time he obtained those two notes?

A. No, sir.

Cross-examination.

By Mr. JACKSON:

Q. When did you say Mr. Foote dissolved partnership with you?

A. I think in 1879.

Q. How many years was he in partnership with you altogether?

A. I can't tell. I think that we were in partnership—regularly in partnership; we were working together, probably, in 1857.

Q. From 1857 to 1879?

A. Yes, sir; with the exception of one year, when I was away.

Q. What was the cause of the dissolution?

A. I didn't feel safe in doing business with Mr. Foote; he got into speculating and losing a great deal more money than I thought it was safe for me to have in any way.

Q. Did he, as you say, continue to speculate after 1877—between 1877 and 1879?

A. I don't know whether he speculated on the board of trade much or not. He got speculating a little in faro bank; perhaps he might have made some deals. He was gambling in most everything. Whether he speculated much on the board of trade after this deal was settled I don't know. I had no particular interest in finding out. He brought a settlement—a loss of something over $40,000—to settle up, and we had no more money in the business than we actually needed—no surplus cash at all—and I thought it hazardous.

301 Q. What loss of $40,000 do you refer to?

A. This is a portion of it—money that he had borrowed from the banks.

Q. Then he lost other monies than this with S. G. Hooker & Company?

A. The money that I settled up that he borrowed from banks, which I supposed went into speculation.

Q. What were the amounts which you settled up at that time?

A. I should think something in the neighborhood of $12,000 to $15,000.

Q. In addition to the settlement that you made with S. G. Hooker & Company of $22,000?

A. In that neighborhood. I don't remember the amount.

Q. How did you make these settlements?

A. Paid some cash and gave my individual paper for the balance; paid the Illinois Trust and Savings bank; settled up by turning out some stock I held in their bank, and the Union Trust Company. I paid Mr. Rawson some money and gave him a note for the balance.

Q. Why did you give your note and pay your stock?

A. I was not able to pay the money myself, and of course Mr. Rawson wanted the money, or wanted it in some shape where he would feel more secure.

Q. Was it a part of your loss or Mr. Foote's loss?

A. Mr. Foote's loss.

Q. Did Mr. Foote indemnify you for what you paid out for him?

A. I suppose so. The paper I turned out was a portion of the indebtedness coming to him—joint indebtedness of the Couch estate.

Q. This stock that you paid out, was that your stock or his?

A. My individual stock.

302 Q. Did he indemnify you for that?

A. He had an interest at the time he went there.

Q. Charged against him in the firm?

A. Yes, sir.

Q. What were his losses between 1877 and 1879?

A. I couldn't tell. I don't know any amounts except what I was called upon to settle.

Q. The settlements you made in 1876?

A. I made settlements of this account in 1876.

Q. You made no other settlement for Mr. Foote after that?
A. No, sir; excepting accounts I might have guaranteed for him.
Q. How large were those?
A. They were very small.
Q. How much would they amount to in the aggregate—$10,000?
A. Probably spent a good deal more than $10,000.
Q. $20,000?
A. Perhaps not quite that.
Q. When Mr. Foote went out of your firm, in 1879, how much capital did he take out, if anything?
A. I couldn't tell.
Q. Did he take out $20,000.
A. I couldn't tell without looking at the books.
Q. Can you approximate—did he take out $25,000?
A. The settlement was made in this way: I had paid out a large amount of money for him in settling up these deals. We took portions of the book accounts and set them one side as joint accounts—say just a portion of it when it was collected. He took some bills receivable, and how much those were and how much the aggregate he don't know, and I don't suppose I could tell from the books.
303 Q. Was his interest an equal interest with yours in 1879?
A. Yes, sir; he had the same profit in the business that I did.
Q. What was his interest as compared with yours?
A. In 1879 I think he had a great deal less money in than I.
Q. But in the division of profits each was the same?
A. Yes, sir; profits were charged equally, and losses.
Q. Did you buy him out in 1879?
A. That was the settlement: I took the business and went on with it. It had always been conducted in my name. We had handled a large amount of glass before I went into the regular business that had been in my name.
Q. You say that you can't tell how much Mr. Foote took out in 1879?
A. I couldn't.
Q. Could you say it was less than $50,000?
A. Yes, sir.
Q. Was it less than $30,000?
A. Yes, sir.
Q. Less than $25,000?
A. I think perhaps it was.
Q. Less than $20,000?
A. I should judge so.
Q. Less than $15,000?
A. I couldn't tell the amounts realized from those accounts. We had a good many bad accounts on the books. It is a very difficult matter to tell.
Q. You say that Mr. Foote first commenced to speculate in 1875?
A. I think in 1875 he called upon me to come and settle up a deal the first time I knew anything about his speculating.

Q. Was that the deal with Mr. Adams?

A. Yes; the first time I knew he was dealing he got into
301 that trouble with Mr. Adams and wanted me to go down and settle up his account with him. I went down. I was not very much posted about the business. I think I took Mr. Hooker with me. I wanted to get some knowledge of the grain business.

Q. What time of the year was that?

A. I should say it was the winter of 1875.

Q. Can you tell the month?

A. No, sir; I couldn't; it may have been early in the spring of 1876.

Q. Did Mr. Hooker go with you at the time?

A. Yes; he went with me at the time. I was unacquainted with the manner of doing business.

Q. Mr. Foote requested you to go down?

A. He requested me to go and see Mr. Adams and try to settle it up. I told him I would go and settle it up if he would agree not to gamble any more on the board of trade. He promised me that, and I settled it up. I said if he was going to continue he could settle it himself.

Q. He was your partner at the time?

A. Yes, sir.

Q. Then what other settlement did you make after that for Mr. Foote?

A. I think there was a settlement with Mr. Lawrence. I don't remember particularly about that.

Q. Who was Mr. Lawrence?

A. He was another board of trade man—a scalper.

Q. How large was that?

A. I think $1,500.

Q. What was the next settlement?

305 A. That is the only settlement I made.

Q. Then, after that, you made the settlement with S. G. Hooker & Company?

A. I think the settlement with Lawrence was after S. G. Hooker & Company.

Q. That with Lawrence was after the transaction with S. G. Hooker & Company?

A. I think it was; I am not positive.

Q. Then you made the settlement with the bank which amounted to about $12,000?

A. I think so—$12,000 or $14,000.

Q. How much was Mr. Foote worth at that time?

A. I couldn't tell.

Q. Worth $25,000?

A. I don't know; he owed a good deal of money around.

Q. Was he worth $50,000?

A. No, sir.

Q. Worth $40,000?

A. I couldn't tell you, Mr. Jackson.

Q. You paid out $32,000 for him, did you not?

A. I paid out a good deal more than that, including notes.
Q. How much altogether for him?
A. I think $35,000 or $37,000.
Q. What were his profits in the business per year?
A. One-half of the profits.
Q. What did that average?
A. For three or four years they didn't average much.
Q. What did they average in 1876?
A. I couldn't tell you. I know for several years along we
306 didn't make much money.
Q. Where were you banking at the time?
A. Union Trust Company.
Q. Have any accounts in any other bank?
A. I think not.
Q. How many banks did you settle up with for Mr. Foote?
A. Two.
Q. What banks were they?
A. Union Trust Company and the Illinois Trust and Saving-bank.
Q. Did Mr. Foote have an account in each one of those?
A. He borrowed money from them.
Q. Didn't have an account with either one?
A. I don't know whether he drew the money out or whether he deposited and checked out. He was in good credit at that time and could borrow money.
Q. Borrow all he wanted?
A. I don't think all he wanted.
Q. You say he had good credit?
A. He went and borrowed this amount of money from those two banks. I think he had $2,500 in stock in the saving-bank, and perhaps he deposited that as collateral.
Q. Did he own any real estate at that time?
A. Yes; I think he did.
Q. Where was the real estate he owned?
A. He had a piece of real estate near the corner of 44th and Wabash avenue, and another piece, I think, on Calumet and 57th.
Q. How much were those pieces worth?
A. It is a pretty hard matter to tell. I think the property cost him something in the neighborhood—the two pieces—of $12,000.
He encumbered the two pieces for $1,500, I think it was, and
307 it was sold out, and I don't think he realized anything beyond what he borrowed on it.
Q. Were they encumbered at the time he offered them to S. G. Hooker & Company in settlement of his indebtedness to them?
A. Yes; I think they were.
Q. At that time they were not foreclosed?
A. I don't think they were.
Q. You say they have been foreclosed since?
A. Yes, sir.
Q. When were they foreclosed?
A. Some years ago.

Q. At that time, when the settlement with S. G. Hooker & Company was made, the encumbrance was $1,500?

A. I believe that was it.

Q. Do you know whether he owned stock in any other corporation besides the bank?

A. Don't think he did. We subscribed together. He took $2,500 and so did I.

Q. Did he have any other real estate besides this?

A. I think that is all.

Q. And his interest in his business?

A. Yes, sir.

Q. Can you tell what year the foreclosure took place?

A. I couldn't.

Q. Do you know whether it was foreclosed in chancery or by advertisement?

A. Foreclosed by Mr. Veeder; he used to be a partner of Mr. Kretsinger's; it was through him that he got the money.

Q. It was for money borrowed, was it?

A. Yes, sir; borrowed money.

308 Q. Can you state the date of the Couch-estate notes?

A. They may have been the 26, 27, 28, or 29th of June, 1876. My impression is I got the notes the day before I made the settlement; the settlement was the 29th day of June, 1876; may possibly have got them the same day.

Q. How many notes were there?

A. Four.

Q. For whom did you get them—for your firm?

A. I got them to settle up this account; they were payable to Ira Foote; the Couch estate was owing us jointly.

Q. Owing your firm?

A. Yes, sir.

Q. These notes were taken as part of Mr. Foote's interest to make the settlement?

A. Taken and credited up to the Couch estate and charged to Mr. Foote.

Q. How much did the Couch estate owe your firm?

A. At that time?

Q. Yes.

A. From $45,000 to $50,000.

Q. How did they pay the balance?

A. In notes.

Q. Same kind of notes?

A. Yes, sir.

Q. When were those notes turned over to your firm?

A. I don't know.

Q. Were they turned over before or subsequent to June, 1876?

A. It is my impression they were turned over before. If my recollection is right, I took the notes down that we had against the Couch estate and exchanged them for these four notes pay-

309 able to the order of Ira Foote; that is my recollection about it.

Q. Have those notes been paid?
A. No, sir; some money paid on them.
Q. How much has been paid upon them?
A. Probably $15,000.
Q. How much remains due?
A. Probably $10,000.
Q. Have there been any proceedings instituted to recover those notes?
A. Of the balance outside of the $20,000?
Q. You say there is some remainder due. Have there been any proceedings instituted for the payment of the balance of the notes?
A. Mr. Foote commenced, I believe, a suit for foreclosure some years ago. He had one note, I think, of about $15,000, which got out of his hands into the hands of Myron Decker; think he gave it to Mr. Decker to commence a suit of foreclosure.
Q. How many of the Couch-estate notes were turned over to Mr. Foote?
A. Only one.
Q. One besides the four?
A. Yes, sir.
Q. Then he received $35,000, did he not, in Couch-estate notes?
A. Yes, sir; equivalent for it.
Q. He received notes amounting to $35,000?
A. Yes, sir; somewhere in that neighborhood.
Q. Was it not exactly that—four of $5,000 each, one of $15,000, making $35,000?
A. It was near $15,000; near that.
310 Q. Where is that note now, of $15,000?
A. It is in my hands. He had got that note pretty badly tied up. Mr. Decker had four interests. Mr. Bisbee had a lien upon the note. The interest had to be settled up before I could get the note.
Q. You say there were two notes of the Couch estate which were assigned to you by Mr. Foote. Which two do you refer to?
A. Those two in the Third National bank.
Q. Was the assignment in writing?
A. Yes, sir.
Q. Have you the assignment by you?
A. No, sir; I haven't it here.
Q. Will you produce it?
A. Yes, sir.
Q. And allow me to see it?
A. I will produce it. I haven't it here.
Q. When was that assignment drawn?
A. I don't remember. The assignment will show for itself.
Q. Was that the first assignment which was made, or was not there another prior to that?
A. Of those two notes?
Q. Yes.
A. I don't remember of any other.
Q. Where was that assignment made?

A. In Chicago.
Q. Who drew the assignment?
A. I think it was drawn by Mr. Black, of Dent & Black; either by him or by Mr. Bisbee.
Q. What year was it?
311 A. It may have been this year; may have been last. I don't remember.
Q. What was the consideration of that assignment?
A. The consideration was the taking care of Mr. Foote. I have spent a good deal of money on him, taking care of him. He had no money of his own, except what I let him have. He has been an invalid and had to have somebody to look after him and have somebody to attend to him.
Q. What is the consideration expressed in the assignment?
A. I don't remember; maybe one dollar or fifty cents.
Q. How much money have you expended on him?
A. A good deal of money.
Q. About how much?
A. A good many thousand dollars.
Q. $5,000?
A. Yes, sir.
Q. $10,000?
A. I don't know.
Q. $15,000?
A. I think not as much. It is a most difficult thing to tell how much.
Q. Since what time have you expended that money?
A. He has had no money for, I should say, 5 years, except what I let him have.
Q. Nothing since 1880?
A. I should think not.
Q. Do you know whether you loaned him money in 1880?
A. I have been paying out money for him all the time.
Q. Do you know whether you paid anything in 1880?
A. Couldn't tell.
312 Q. Anything in 1881?
A. Yes, sir.
Q. How much did you pay in 1881?
A. I couldn't tell.
Q. In addition to these two notes in the Third National bank, as you say, which were assigned to you, and the note of Decker's, the one Decker had, which is now in your hands, has there been any other assignment made to you by Mr. Foote of any property whatsoever?
A. He assigned a judgment to me against Mr. Pearce; that is all.
Q. How much was that?
A. I collected about $8,500.
Q. That was paid to you, was it?
A. Yes, sir.
Q. What is the balance remaining due on this note you received from Decker?

A. $7,500.

Q. When was that assignment made to you of the judgment against Mr. Pearce?

A. I think in 1881 or 1882. I don't remember exactly.

Q. What was the consideration of that?

A. I had paid out money for Mr. Foote. He had got suits on his hands that he had to carry out, and I had become responsible for some of his fees—attorney's fees—and, in fact, had advanced him money to carry on his cases. It had gone so far that I didn't care about taking a great many chances more, and he assigned that to me.

Q. Can you state how much you advanced in 1881?

313 A. I couldn't tell.

Q. Can you tell how much you had advanced to him on his account prior to the assignment of the judgment against Mr. Pearce?

A. Couldn't tell.

Q. You say you don't know whether you advanced any money to him on his account in 1880, do you?

A. I think probably in 1880 he may not have got much.

Q. Have you advanced $5,000 on his account in 1881?

A. I couldn't tell; have been paying money all the time.

Q. Could you say you advanced $2,500 in 1881?

A. Yes, sir.

Q. More than that?

A. A good deal.

Q. How much, then, in your opinion, have you advanced for him since 1881?

A. I couldn't tell. There are a good many other considerations besides the advancement of money that Mr. Foote is indebted, for he has made his home with me; been provided with nurses and doctors, and taken good care of. Outside of the friendship I have for Mr. Foote there would be no money consideration for what I have gone through with.

Q. Were you present when that assignment was drawn—the assignment of the Pearce judgment?

A. No, sir.

Q. Do you know by whom it was drawn?

A. By Mr. Cate.

Q. Albion Cate?

A. Yes, sir.

314 By Mr. JACKSON: Will you produce both assignments, if you please—the assignment of the Pearce judgment?

Q. Have you the power of attorney that Mr. Foote gave you?

A. I surrendered the original power of attorney, I think, to Mr. Flower. I asked him if a copy wouldn't do, and he said he wanted the original.

Q. You haven't seen it since that date, you say?

A. No, sir; he gave it to me to settle up his losses with S. G.

Hooker & Company; to the best of my recollection, I left the original with him.

Q. Where is the account or the bill that was given to you by S. G. Hooker & Company?

A. I stated that the last I saw of it was in Judge McAllister's court; I think the circuit court.

Q. The bill was rendered by S. G. Hooker & Company?

A. Yes, sir.

Q. Look at Exhibit C in the abstract of record in the case of Pearce, assignee, against Ira Foote, filed in the appellate court of Illinois, first district, for the October term, A. D. 1882, and state whether that is a copy of the account which was furnished to you.

A. I should say that was a bill about that length and about that amount—the bill that was first rendered. They afterward charged up a loss which they said was on some corn which made the bill $22,165 and some cents. I think the bill that Mr. Foote gave me was about this, and the bill that was rendered was very much such a bill, with the exception of that one item or two items added to it.

Q. Do you know where that bill is?

A. That bill—I told you the last I saw of it it was in Judge
315 McAllister's court.

Q. What bill is this?

A. Copy of it.

Q. What was done with the note which was given by Mr. Foote to S. G. Hooker & Company and surrendered at the time the settlement was made?

A. I brought the note back to the office when I settled up the bill and haven't seen it since.

Q. Was it given to Mr. Foote, do you know?

A. I don't know that it was. Mr. Vernon took charge of it, and I suppose he delivered it to Mr. Foote. I don't know; couldn't say positively. I haven't seen the note since. When the case came up, Tenney against Foote, the bill was called for, and it was taken over there. I saw it in court, the last time I ever saw it.

Q. What time do you say the injunction suit was instituted?

A. I think the injunction was granted on the 10th or 12th of January, 1877.

Q. Did you read the bill in chancery?

A. Yes, sir.

Q. You read the bill?

A. Yes, sir.

Q. Where did you read it?

A. At my house.

Q. Who gave it to you?

A. Mr. Kretsinger. He came up there and read it himself. I didn't read it.

Q. What time was it you say you lunched with Mr. Pearce?

A. I should say two or three days after the injunction was served; might have been the 15th; might have been the 20th day of
316 January, 1877.

Q. What was said at the time about the Couch-estate notes?

A. Mr. Pearce was very indignant. Of course he knew that I was interested; that he should be enjoined against the collection or the use or the transfer of the notes, and especially so that his wife should be annoyed in that way.

Q. Did you say that Mr. Pearce stated that he didn't have the Couch-estate notes?

A. Yes, sir; didn't have them or didn't know anything about them; for that reason he thought it was unnecessary to disturb him.

Q. Did he say who had the notes at that time?

A. No, sir.

Q. Did you ask him who had the notes?

A. No, sir.

Q. Did you make any inquiries?

A. No, sir.

Q. Did you report this fact to anybody?

A. Yes, sir.

Q. Who did you report it to?

A. I told a good many about it.

Q. Did you report it that day to anybody?

A. Perhaps directly after it.

Q. That day?

A. Might not have been that day.

Q. Whom did you report it to?

A. Mr. Kretsinger; also Mr. Foote.

Q. What was done with that suit?

A. I don't know.

Q. You don't know whether it was dismissed or not?

A. I don't know; didn't prosecute it.

317 Q. How many times have you testified before with reference to the matter of the Couch-estate notes?

A. Twice.

Q. Only twice?

A. Yes; three times.

Q. Have you ever testified before as to your conversation with Mr. Pearce?

A. No, sir; never been asked for it, although that fact was well known to the attorneys when we had the case in the United States court.

Q. Well known to what attorney?

A. Mr. Bisbee. Mr. Storrs knew it.

Cross-examination.

By Mr. THOMPSON:

Q. Did you make any memorandum of the conversation with Mr. Pearce at the time you had the conversation?

A. No, sir.

Q. What Mr. Pearce complained of was the issuing of an injunction against himself and wife, was it not?

A. Yes, sir; especially against his wife; seemed to be very much annoyed that she should be enjoined.

Q. Was there anything said at that conversation as to who was the holder of those notes?

A. No, sir; I think not. I didn't speak to Mr. Pearce about it; he called my attention to the fact.

Q. That he didn't hold the notes?

A. He told me he had not the notes, and didn't know anything about them. He expressed himself as being very much out of patience to think that Mrs. Pearce should be enjoined.

318 Q. Have you any recollection of his saying he did not know anything about them?

A. I don't know as he said he didn't know anything about them; he said he had not got the notes.

By Mr. JACKSON: Did he say he had been served at that time?

A. Yes, sir; and his wife too.

Redirect examination:

Q. You were asked in cross-examination in relation to the assignment of the judgment rendered in favor of Mr. Foote against J. Irving Pearce, based upon one of these four Couch-estate notes which you turned over to S. G. Hooker & Company, said judgment having been rendered in the circuit court of Cook county and affirmed by the appellate court of the first district of Illinois, then by the supreme court of this State. I will ask you if the paper I now hand you is the assignment which you referred to.

A. Yes, sir.

By Mr. JACKSON: I notice it is described as having been executed in duplicate. Do you know whether there is another copy, and whether it was executed in duplicate?

A. This is the only copy ever I saw.

Q. You don't know whether it was executed in duplicate?

A. No, sir.

By Mr. BISBEE: How long has Mr. Foote made it his home with you, Mr. Rice, at your house?

A. I think about nine years.

Q. And what is the condition of his health, and what has it been of late?

319 A. Been very feeble; especially for the last two years.

Q. State whether he has had paralysis.

A. Yes, sir.

Q. How old a man is he?

A. In his 68th year.

Q. And state whether he has to travel and go to springs for his health?

A. He has been away both winter and summer—that is, the hot weather in the summer and the cold weather in the winter since he has been sick, as soon as he could get away.

Q. Who furnishes him money?

A. I do.

Q. Has he had any money or any care or any attention of physicians or nurses or anything else for the last seven or eight years excepting what has come from you?

A. No money within the last 5 years except what has come from me, and has had no nurses or doctors or care except what I have paid for since he has been sick.

By Mr. JACKSON: How long has he been ill?

A. I think he was paralyzed on the first or second day of July two years ago.

Q. Before that time he was pretty well, was he not?

A. He was able to get about and take care of himself. He has not been a well man for a number of years.

Q. As I understand, you have not paid out anything for him since prior to 1881?

A. I don't remember, Mr. Jackson, how the account stood before then. I think he was several thousand dollars in my debt
320 before that.

By agreement of counsel, the taking of further testimony in this case is adjourned to Wednesday, July 15th, 1885, at 3 o'clock p. m.

321 SEPTEMBER 26TH, 1885.

Examination resumed pursuant to adjournment.

G. W. KRETZINGER, being first duly sworn, testified as follows for compl't in X bill:

Q. What is your name?

A. Geo. W. Kretzinger.

Q. What is your age?

A. Thirty-nine.

Q. Where do you reside?

A. In Chicago.

Q. How long have you resided in the city of Chicago, county of Cook and State of Illinois?

A. Since 1873.

Q. In what business, if any, have you been engaged since 1873 in said city of Chicago?

A. Attorney-at-law.

Q. Are you now engaged in that business?

A. Yes, sir.

Q. Are you acquainted with Ira Foote, in this city?

A. Yes, sir.

Q. How long have you known him?

A. Since June, 1874, to the present.

Q. Did you ever do any legal business for Ira Foote; and, if so, what?

A. Yes, sir.

Q. Did you ever bring a suit for him?

A. Yes, sir.

Q. What was that?

A. I brought several suits for him.

322 Q. Did you ever bring a suit for him in connection with four notes that he received from the Ira Couch estate, of $5,000 each, or any of them?

A. Yes, sir; in January, 1877.
Q. On what day of January did you bring it?
A. January 12th was the day the bill was filed.
Q. January 12th, 1877?
A. I think so; January 12th.
Q. Who was the complainant in said bill?
A. Ira Foote.
Q. Who were the defendants in said bill?
A. The members of the firm of Hooker & Company, and one Woods, and J. Irving Pearce and wife, and, I think, one more whose name I can't recall.
Q. Was it Ira Couch?
A. Yes, sir; some of the Couches.
Q. Did you keep a docket at the time about which you are testifying?
A. Yes, sir.
Q. Have you the docket entries made in said case?
A. I have.
Q. Please give to the reporter all that your docket shows with reference to said suit.
A. Ira Foote *v.* Stephen G. Hooker, George D. Lincoln, W. H. Wood, James Couch, Caroline E. Couch, J. Irving Pearce, Mrs. J. Pearce. Bill to enjoin transfer, &c., of notes and for accounting.
323 January 12th, 1877, bill filed and writs of injunction issued, and bond for $5,000, with Fernando Jones as surety, filed July 4th. Tenney, Flower & Abercrombie enter ap. of Lincoln to M. 19 to answer.
January 12th, injunction writs served on defendants Hooker, Lincoln, and Pearce & Mrs. Pearce.
January 19th, 1877, on William H. Wood; May 28th, *and* Mrs. Caroline E. Couch; May 29th, 1877, on John T. Chumasero; April 5th, 1877, on James Couch.
Writ of summons served on Hooker, Lincoln, Wood, and Pearce. March 24th, answer of Lincoln filed. November 19th, filed replication to answer of Lincoln. January 14th, 1878, filed withdrawal of appearance.
Q. You may state whether or not such docket entries were made in the regular course of business and upon the regular docket kept by you in your law office.
A. Yes, sir.
Q. And were such entries correct and truthful at the time they were made, and are they now correct and truthful?
A. I have no doubt of it.
Q. You may now state as nearly as you can the substance
324 of the bill that was filed on January 12th, 1877, about which you have testified—as nearly as you can recollect.
A. My best recollection is that Hooker & Lincoln were engaged, as members of the board of trade, in buying and selling grain; that Mr. Foote became one of their customers; that some time before this bill had been filed they had been dealing for Mr. Foote in what Mr. Foote called or claimed to be options or gambling contracts;

that they had claimed from time to time that he became indebted to them in margins or losses, as the case may be, to quite a large sum of money; that he had paid them a considerable sum of money, and had turned over to them, as further payment if not full payment, certain notes against the Couch estate. I think these notes were four notes of $5,000 each. Whether all of these notes were involved at that time or not I cannot now distinctly remember. Mr. Foote claimed that the transaction from beginning to end was a gambling transaction; that no wheat was in fact bought or sold. Thereupon this bill was prepared and filed for the purpose of restraining and enjoining Hooker & Company from transferring these notes or either of them to any other person or from collecting or attempting to collect the same, and for an accounting for the purpose of determining the amount of cash that had been paid by Mr. Foote to Lincoln & Company upon these gambling contracts;
325 and my impression would be that the prayer, among other things, asked for the restoration of these notes to Mr. Foote.

Counsel for the Third National bank objects to this testimony upon the ground that it is not the best evidence, and moves that the question and answer be stricken out.

Q. Can you state why J. Irving Pearce and his wife were made parties to that bill of complaint?

A. My recollection is that Mr. Foote was advised that Hooker & Company had or were about to transfer these notes or part of them to J. Irving Pearce, and Mr. Pearce and his wife were made parties defendant for the purpose of reaching such an assignment if made and prohibit the same if not made.

Q. Have you any recollection of having a conversation with J. Irving Pearce in relation to it about the time of the filing of this bill? If so, state when you had such conversation and where it was.

A. I have a very distinct impression, and from that an impression in fact, if not an absolute recollection, that Mr. Pearce came to me or I met him shortly after this bill was filed, and that he regretted having been made a party defendant or disclaimed having any interest in the notes. I cannot give this impression so much from the recollection of any distinct conversation that I had with
326 Mr. Pearce upon the subject as from my conduct which follows it, and that is I treated Mr. Pearce as being substantially out of the case. Of that I have a very distinct recollection.

Q. Have you a copy of that bill, or do you know where one can be found?

A. No, sir.

Q. Have you made any search in your office for a copy or any memorandum of it?

A. I have. I dictated the bill in short-hand, and at that time the short-hand books were not preserved as they should have been and as they have been for a short time after that to the present time.

Q. You have been unable to find any copy or any memorandum concerning it?

A. No memorandum except a newspaper clipping, which is pasted in the docket entries which I have read, which gives the substance of the bill.

Q. When was that newspaper clipping pasted in said docket entry?

A. I can only give my idea, that it was the next day after the bill was filed or the day following; very soon, at least, thereafter, as it states in the first line of the clip: "Ira Foote filed a bill yesterday in the superior court against S. G. Hooker & Company," showing that the clip must have been pasted the next day after the bill was filed, which was January 12th.

327 Q. I will enquire if the clipping substantially states the contents of the bill which you filed in that case?

A. It states the subject-matter in controversy.

Q. You may read that clip to the short-hand reporter, and she may take it down.

A. "A disgusted speculator."

Ira Foote filed a bill yesterday in the superior court against S. G. Hooker and George D. Lincoln, asking for considerable relief. He says that in September, 1875, the defendants were engaged as members of the board of trade in buying and selling grain. Hooker about that time came to complainant and represented that fortunes were to be made very easily on the board of trade, and induced him to allow them to trade on the board for him. He was only to put up such margins as should be required from time to time, and he was assured that there was no possibility of any loss. They began buying and selling for him in September, 1875, and in the spring of 1876 presented him with a claim for $12,000 or 15,000 losses instead of the expected check for profits. He remonstrated, saying he couldn't afford to lose, and proposed to stop there and then, but Hooker glowingly made fine promises to recover all the money, and complainant foolishly trusted them and allowed them to go on; the consequence was that in June following the 15,000 had grown

328 to $22,165.72. Complainant at that time was suffering from sickness and nervous prostration, caused by his unlucky speculations, and was compelled to go abroad. He, however, first appointed J. H. Rice his attorney-in-fact to attend to his case. Mr. Hooker then went to Mr. Rice and, representing that his firm had been compelled to pay the $22,165.72, induced the latter to settle the claim by giving some notes against the Couch estate for $20,000 in part payment and making up the remainder in cash. It has since been ascertained that Hooker & Company, about June, 1876, compromised with their creditors at 30 cents on the dollar, and complainant charges that the claims for which he was held liable were included in this compromise, Hooker & Company pocketing the remainder, 70%. Foote further charges that the contract between him and the defendants was to deal in options and differences, which is forbidden by the statute of Illinois as forming gambling contracts; that no agreement was ever made that Hooker & Company should make advances, and if they did so it was purely voluntary

and at their own risk. He, however, doubts that they ever made any such deals as they claimed. He therefore asks that an accounting may be had of the transactions above mentioned; that the defendants may be enjoined from collecting the notes given by the trustees of the Couch estate and be compelled to redeliver them all to him.

329 Cross-examination by Mr. JACKSON:

Q. Mr. Pearce's name is not mentioned in the notice which you have just read?

A. No, sir.

Q. Was the Third National bank made a party to the suit?

A. I should say not. Without further information, I have no recollection of it.

Q. As I understand, Mr. Pearce was made a party solely in his individual capacity?

A. That is my best impression.

Q. What became of the bill which was filed?

A. I have understood that it was dismissed, but as I withdrew from the case January 14th, 1878, I would have no knowledge excepting hearsay.

Adjourned till afternoon.

JOHN REICH, being first duly sworn, testified as follows:

Q. State your full name.

A. John Reich.

Q. Where do you reside?

A. Chicago.

Q. What is your business?

A. File clerk.

Q. In what court?

A. The superior court of Cook county.

Q. How long have you occupied that position?

A. A little over four years.

330 Q. Have you with you the records of the superior court of Cook county for the month of January, 1877?

A. I have the general docket for one; record number 14 is the general docket and number 34 the dismissal record.

Q. Will you please open the general docket kept by the superior court clerk for Cook county, showing the case of Ira Foote against S. G. Hooker *et al.*?

A. Yes, sir.

Q. What is the number of the docket and what is the page?

A. The number of the docket is 14, page 353.

Q. Please read to the short-hand reporter what that docket contains.

A. The docket contains the title of the case. The heading of the book is as follows: Attorneys, general number, names of parties, action, when commenced, what issue. The entries under the heads are as follows: Attorneys, Kretsinger and Veeder; general number,

65484; title of case, Ira Foote *v.* S. G. Hooker, George D. Lincoln, William H. Wood, James Couch and Mrs. Caroline E. Couch, John T. Chumasero, J. Irving Pearce, and —— Pearce; action, bill; commenced January 12th, 1877.

Q. That is all that book shows, is it?

A. Yes, sir.

Q. Now you may state the other records of that case.

A. Dismissal record number 34.

331 Q. Upon what page is the record?

A. Page 92. The following is the entry of that page: Number 65484; Ira Foote *v.* Stephen G. Hooker *et al.*; bill.

And now, on this day, this cause being called for trial and the complainant not appearing in person or by counsel, and he being now here three times solemnly called in by this court, comes not nor does any one for him, but herein he makes default and fails to prosecute this suit in his behalf. It is therefore ordered by the court that this suit be, and the same is hereby, dismissed at complainant's costs for want of prosecution. Therefore it is ordered by the court that the defendants do have and recover of and from the complainant their costs and charges in this behalf expended and have execution therefor.

Q. Under what date is the order entered that you have just given to the reporter?

A. The 14th day of June, 1880.

Q. You testified that you were the file clerk; state whether or not the files of this case—state where they should be.

A. They should be in the vault in the court-house.

Q. Have you made a search for the files in this case?

A. I have, sir.

Q. State the result of such search.

A. I have looked where they ought to be and cannot find
332 them; they are not in the vaults. We have a drawer index indicating cases put in each drawer, and there is no entry in that book.

Q. Do you know where they are?

A. No, sir.

Q. Do you know when you last saw them?

A. I cannot remember, sir. I don't remember of ever seeing the papers.

Q. Have you searched every place you know of?

A. I have, sir; searched in the proper place.

Q. And you are unable to find them?

A. I am unable to find them.

Complainants rest.

333 OCTOBER 14TH, 1885.

GEORGE D. LINCOLN, being first duly sworn, testified on behalf of Third National bank as follows:

Q. What is your full name?

A. Geo. D. Lincoln.
Q. Were you a member of the firm of S. G. Hooker & Company?
A. I was.
Q. For how long a time were you a member?
A. Between 4 and 5 years.
Q. During what years?
A. From 1871 to 1876.
Q. How long have you resided in Chicago?
A. Since 1871.
Q. What was the business of S. G. Hooker & Company?
A. Commission business.
Q. What was the amount of capital of the firm?
A. Well, I don't know. We never had any capital set. I put in $10,000 to start on, and after that from time to time more.
Q. Who composed the firm of S. G. Hooker & Company?
A. S. G. Hooker and myself.
Q. How much, if any, capital did Hooker put in?
A. Not anything.
Q. Were you a member of the board of trade during those years?
A. Yes.
Q. Are you still a member of the board of trade?
334 A. Yes.
Q. What is your business?
A. Well, I am trading a little there on the board.
Q. Was James B. Norton ever a partner in your firm or a partner with you?
A. No.
Q. Is he any relation of yours?
A. No.
Q. What relation is he to Mr. Hooker, if any?
A. Brother-in-law, I suppose; claimed to be.
Q. Are you acquainted with Ira Foote?
A. I am.
Q. How long have you known him?
A. Since 1874.
Q. Did he ever deal with your firm?
A. Yes.
Q. During what time?
A. From some time in 1874 till 1876, and from time to time.
Q. What dealings did your firm have with him?
A. Buying grain and provisions on the board of trade and selling it—buying and selling.
Q. Who conducted the trades on the board for him?
A. Well, Mr. Hooker managed them; Mr. Geltmacher and J. B. Norton did most of the trading.
Q. Did you ever hear of any special arrangement made by your firm with him?

Objected to.

335 It is hereby stipulated between counsel that all objections may be made upon the hearing of the cause before the master

or the court as to competency & relevancy, as though they had been made to each question and answer as propounded and given.

A. Never—that is, not at that time.

Q. When did you first hear that there was any special arrangement claimed to have been made?

A. Not till a long time after the settlements were made with Mr. Foote.

Q. Did Mr. Hooker ever advise you that any arrangement had been made?

A. Never.

Q. While these trades were being conducted on the board of trade?

A. Never intimated any such thing; always claimed that Foote wanted to trade and was good for anything he did.

Q. Were your firm doing a general business on the board of trade?

A. Yes, sir.

Q. Will you state when you heard of any arrangement made between Mr. Foote and Mr. Hooker as to Foote's dealings on the board of trade through your firm?

A. It was either at the time after Mr. Foote got out the injunction or in the case before Judge McAllister. I am inclined to think, when the evidence came out before Judge McAllister, that was testified to. I am inclined to think that was the first I heard
336 of it.

Q. What were the dealings on the board for Foote?

A. Buying and selling grain and provisions for another month the same as we were doing for all our customers.

Q. You say the same as you traded for all other customers?

A. Yes.

Q. Did your firm ever buy any puts and calls for Mr. Foote?

A. No.

Q. Did your firm ever have any agreement with him that any grain or any article or commodity which you purchased for him should not be delivered?

A. Never heard of any such thing at the time; of course, we couldn't prevent it from being delivered.

Q. Why couldn't you prevent it?

A. Because we were obliged to receive it unless we could settle it up before it became due.

Q. Were these trades conducted under the rules of the board of trade?

A. In all cases.

Q. Please state, if you know, whether any money was ever paid to Mr. Foote by your firm on his account.

A. Yes, sir; there was quite an amount paid from time to time. When he made a profit he took it; never hesitated on that.

337 Q. Were there any other sums of money furnished him from time to time, at any time?

A. Well, there was money and some bills paid by his order and charged to his account.

Q. State if any money which you give him was ever returned by Mr. Foote to your firm.

A. Never knew of its being returned.

Q. Who gave the orders for the purchases or sales on account of Mr. Foote?

A. He gave them himself.

Q. How would he give them?

A. He would come to the office and order stuff bought and sold, or would meet one of our men on the street and tell him to go in and buy so much stuff or sell so much stuff; in that case they would report to Mr. Hooker on the board when they met him on the street, and Hooker would decide whether to do it or not.

Q. Please state whether, during these trades, Mr. Foote ever visited your office.

A. Quite often.

Q. Probably how often?

A. Well, sometimes he was in there every day, perhaps three times a day; then he wouldn't be in for some days. He was in there more or less right along, giving orders.

Q. Were any of these transactions made between your firm and Mr. Foote?

A. Never.

Q. Who were they made with?

A. By members on the board of trade—firms on the board.

338 We never took any trades for any of our customers.

Q. Please state just what was the character of the transactions which you made on the board of trade for Mr. Foote, when you purchased or when you sold.

A. Well, supposing we had an order to buy 20,000 or 30,000, whatever it was, corn for May—for May delivery. Before May came around, first of May, if he wanted it sold out, we would sell it out and try to ring it up; ring up as much as we could through what we had on the board there, kind of a clearing-house; ring it up and settle the deals that way. If we couldn't ring it up when it came the first of the month we had to receive it and pay for it and deliver it to the party. In other cases we would have it bought and not sold; when the time for delivery came it would be delivered to us and we would have to take it, cash, pay for it, and carry it till it was sold out.

Q. Did the seller have the option to deliver at a certain time during the whole of the next month?

A. Any time during the month that the trade was made for.

Q. That is the only option he had?

A. The only option he had.

Q. Did you ever have any settlement with Mr. Foote on account of the deals which you made for him?

339 A. Yes, I think we had three during the whole time that we traded.

Q. When was the first settlement?

A. I think it was January 1st, 1875.

Q. Can you state what that was and how it was done?

A. We balanced his account, and at that time he had a credit of a small amount which we brought down and carried to his credit on the new account.

Q. In the new account?

A. Yes, sir, of 1875; and then in 1875 we made another settlement with him with his note of $12,000 and some hundred dollars, and then in June, 1876, the first of June, we made up his account again.

Q. Was that the last settlement?

A. That is the last.

Q. How large was the note which he gave you?

A. The note he gave us was $15,000.

Q. In what settlement was that?

A. That was before the settlement was made. We made an estimate—that was about June, 1875—of the amount that he was owing us, considerable, and there was quite a loss from the deals on hand, and he gave us his note of $15,000 for what he was owing and security on his deals. After we got his deals all settled up, his trades on the board, he was owing us $12,000. We endorsed the difference between $15,000 and $12,000 and some hundred dollars on the note, and gave him credit for that amount, which balanced his account.

340 Q. That was endorsed on the note?

A. Endorsed on this $15,000 note.

Q. Who asked for this note of $15,000, if any one, from Mr. Foote, or to whom did he give it?

A. He gave it to us in the office. Mr. Hooker brought him around there to give the note, and Geltmacker. They had both been running after him to get some money. He said he had no money, but he was worth $125,000 and would give his note, and would have some money very soon, and took up the note.

Q. That was on account of the deals?

A. On account of the trades that we had had with him and lost.

Q. Up to that time?

A. Up to that time.

Q. What was done with that note?

A. In the final settlement, when we took the Couch-estate notes, that was turned into it—turned over to Mr. Rice.

Q. Was this Mr. Foote's individual note to your firm?

A. Yes, sir.

Q. Please state how the third settlement was made.

A. Well, after this settlement was made with the note, I refused to trade with him for some time after that. Hooker insisted that he was good and wanted to make up part of this loss, and along

341 in the fall I consented to trade with him some more on his representation that he was all right, and when we settled up the next time he was owing us something like $8,000 besides this note, between $8,000 and $9,000, which made the whole amount something like $22,000, the note and interest and the balance on the books, and we made a settlement then that reduced the account, and Mr. Foote said it was all right, with the exception of a small item

in commissions, a small amount that Hooker agreed to do for half price. I told him if Hooker said so I would change it. So I went to Hooker and Hooker said there was nothing there. The account was all right. He never agreed to do the- for one-half commissions. So to satisfy Mr. Foote I made the reduction on what he claimed, about $300 or $400.

Q. Was the reduction made upon the bill?

A. Yes; $300 or $400, and Mr. Foote said it was all right and should every dollar of it be paid.

Q. Did you say that Mr. Foote claimed there was some arrangement respecting commissions?

A. Yes; Mr. Foote claimed so, but Hooker said not, but I allowed what Mr. Foote claimed.

Q. State whether Mr. Foote ever claimed to you or to any one else, to your knowledge, that while these negotiations were being carried on in your office and deals and trades being made, whether there was any special arrangement made between him
342 and Mr. Hooker or between him and your firm.

A. Never heard of any such thing at that time; and then in that final settlement Mr. Rice—Mr. Foote went away and Mr. Rice came and made the settlement.

Q. What were the circumstances attending that settlement?

A. There was no question about the bill but what it was right; it was merely a question of what we should take in payment for it. They wanted to turn in some land, but I didn't want land.

Q. What land did they offer?

A. Some out south here somewhere.

Q. Do you know where it was?

A. I don't remember now. I think there was one piece on Wabash avenue, way out pretty well, and south some place.

Q. Can you give the location more definitely than you do now?

A. No; I couldn't. I know one was on Wabash avenue, but pretty well out.

Q. Whose property was it?

A. Mr. Foote.

Q. And who made the offer of the property to you?

A. Mr. Foote.

Q. Mr. Foote or Mr. Rice?

A. Mr. Foote offered that property before he went away and then afterwards Mr. Rice wanted I should take it in the settlement.

343 Q. Did any one state what the value of these respective pieces was?

A. Yes, sir; I went and made inquiries at that time. I found they were not worth anywhere near what he wanted for them at that time—what he wanted to turn them in at.

Q. What did he state was their value?

A. $11,000.

Q. For both?

A. Yes; for both; that is what he wanted to turn them in at, or about that.

Q. What did you do about the land?
A. I didn't take. I returned the papers to him.
Q. What papers did he give you?
A. He gave us an abstract and a deed, I think.
Q. What time of the year was this?
A. This must have been along in May—April or May.
Q. Of what year?
A. 1876.
Q. How soon after that did Mr. Foote leave?
A. He left about the first of June—soon after the first of June.
Q. Where did he go?
A. Went East. I don't know where.
Q. And you say Mr. Rice took up the settlement?
A. Yes, sir.
Q. What was done by Mr. Rice?
A. In course of about—of about a month we came to a settlement by his giving us these 4 Couch-estate notes and the balance in money.

344 Q. Please look at paper marked Exhibit C and state what it is.

A. This is an account between Ira Foote and S. G. Hooker & Company from September 8th, 1875, down to May 15th, 1876.
Q. Have you compared that account with the books of your firm?
A. I did at the time it was made.
Q. Is it a correct transcript?
A. It is.
Q. When was that rendered?
A. With the exception of a little there that is not finished yet; settlements there on the board of trade—trades that were not closed there at the time this one was made.
Q. When was that account given to Mr. Foote?
A. It was probably given to him on the 15th. That is the date of it.
Q. Given to him personally?
A. Probably it was. Those things were all made to him personally—either personally to him or by mail.
Q. Please look at the paper marked Exhibit D and state when that paper is.
A. This is an account *with* Ira Foote with S. G. Hooker & Company from the commencement of his trading with the firm, November 7th, 1874.
Q. What does that represent?
A. This represents an account of his trading with the firm; monies that we collected from his account and on his account and monies that were paid out and commissions.

Q. Was that presented at the final settlement?

345 A. Yes. This is the final settlement. It is money that we collected on his trades and money that we paid out on his trades for corn that we carried, paid for, and things cash, and commissions, interest, storage, insurance, and all charges that came in under cash property.

Q. Was this presented to Mr. Foote or Mr. Rice?
A. It was.
Q. To whom?
A. Mr. Foote.
Q. It was presented to Mr. Foote?
A. Yes, sir.
Q. And it was upon that Exhibit D that the final settlement was made in which you say the 4 notes of the Couch estate were turned over to your firm by Mr. Rice and some cash?
A. Yes; this is the account. Exhibit C was a memorandum intended to show approximately the state of the account between Mr. Foote and the firm, but Exhibit D was a full and specific account.

By Mr. JACKSON: I offer these two papers called Exhibits C and D in evidence as Exhibits A and B for defendants in cross-bill of Rice.

Q. Please look at Exhibit D and state what the word "differences" as appears from time to time means.
A. We used that word to show whether a profit or a loss, kind of a misleading word, but they used it at that time. Suppose we bought 15,000 bushels of oats at 25 cents and sold it at 26
346 cents, the differences would be one cent a bushel.
Q. You mean monies that your firm paid to other firms of account of Mr. Foote's deals?
A. Yes; or received from other firms.
Q. Did your firm ever receive any grain or any other commodity on account of Mr. Foote, on account of purchases made for Mr. Foote?
A. We received grain and provision, and paid for——
—. Cash?
A. Yes; we received some of these.
Q. Does that account show that?
A. It shows some of that. I don't know whether it shows all or not. I see some of them here.
Q. Shouldn't it show them all?
A. Well, we might in this case like this: We might have the stuff to sell for May and sold for May, and we couldn't ring it up, and it was delivered to us on the first day of May or some day in May, and we would turn right around and deliver it to the other party; just simply took it in; wouldn't keep it in the office over night. Then it would probably appear in here as merely difference; but if we carried it so as to charge interest, insurance, and storage it wouldn't show that way. A great deal of stuff we were in the habit of taking in that way and pay for it and take it right out to the party and collect.
Q. Did your firm ever agree with any of its customers to make transactions upon differences alone?
347 A. Never knew of any such case, because it was impossible to do it.
Q. Did you ever make any offer of that kind to Mr. Foote?
A. No; we couldn't do it under the rules.

Q. When you paid out sums in settlement were they charged against Mr. Foote?

A. Yes, sir.

Q. When any money was received what was done?

A. Credited to Mr. Foote.

Q. Does that account show whether any monies were paid out by your firm for Mr. Foote?

A. It shows that we charged him with it; of course we paid it out.

Q. Did you actually pay out money on his account?

A. We actually paid it out.

Q. What was done with the notes received by your firm—the notes known as the Couch-estate notes?

A. One of them was given by Mr. Tenney to secure what we were owing them and other accounts. Two of them were given to the Third National bank to secure a note that we made there, and one we gave to Mr. Pearce as assignee of S. G. Hooker & Company.

Q. You say you were indebted to the Third National bank at that time?

A. Yes, sir.

Q. How were you indebted?

A. By overdrafts—that is, they paid out more money on our checks than we had there.

348 Q. Had you given them a note?

A. Yes.

Q. Please look at the following note, dated Chicago, December 30, 1876, signed by the firm of S. G. Hooker & Company, and state whether that is the note which you refer to as having been given *to* your firm to the Third National bank.

A. Yes, sir.

Q. Read the original note as it appeared, not with the interlineations or with the additions that have been made since the bank had it. Read it as given at the time your firm gave it.

A.—

$13,912.97. CHICAGO, *December 30th*, 1876.

Ninety days after date we promise to pay to the Third National Bank of Chicago, or order, at their office, thirteen thousand nine hundred twelve and $\frac{97}{100}$ dollars, for value received, with interest at the rate of 10% per annum. We have deposited with them as collateral security for the payment hereof one note of even date herewith for $3,000, which is secured by a mortgage on an elevator in Grinnell, Iowa; six notes signed by L. Berger, two notes signed by F. Bishop, two notes signed by Vinden and 90 tec. ham, two notes signed by the Couch-estate trustees.

(Signed) S. G. HOOKER & COMPANY,
In Settlement of the Firm Account.

349 Endorsed on the note is the following:

"We guarantee the collection of this note.

GEORGE D. LINCOLN.
S. G. HOOKER."

Q. Do you know when that note was given to the Third National bank?

A. On the date of it, I suppose.

Q. When were the notes of the Couch estate given to the Third National bank—the two notes of which you have spoken?

A. I think it is the same day that the notes was given.

Q. Who gave the note of the firm which has just been read to the bank?

A. James B. Norton signed the note of the firm, as he had the power at that time.

Q. Who gave it to the bank?

A. I think that Mr. Peschall, Mr. Hooker's attorney, and I took it up there.

Q. To whom did you give it?

A. Mr. Pearce.

Q. Who is Mr. Pearce?

A. He is the president of the Third National bank.

Q. Where did you give it to him?

A. In his private office.

Q. In the bank?

A. In the bank; yes, sir; president's office.

Q. Did you at any time ever hear any objection made by Mr. Foote to the transfer to your firm of the Couch-estate notes?

A. No; never heard any such thing.

Q. Did you ever at any time?

A. Never.

350 Q. Mr. Lincoln, Mr. Hooker has testified that the note for $15,000 given by Mr. Foote to your firm was received for accommodation. Please state whether that is the case.

A. I never heard of any such thing as that till I heard his testimony.

Q. Was it the case?

A. It was not the case. It was given because he was owing us and we wanted it.

Q. Mr. Hooker has testified substantially, on page 55, that Mr. Foote was charged with the same lot of corn as was purchased by your firm for certain Canada parties. Please state whether that is so or not.

A. There is no truth in it whatever. The Canada parties had no corn bought for that May delivery that this corn was taken in, so we couldn't have charged it to both parties. It was Mr. Foote's corn; bought for Mr. Foote and no one else; it was his corn that was received and carried. Mr. Hooker knew all about it at the time it was being carries, too. At his own request we had taken it in.

Q. Please examine the charge in the exhibit under date of May 1st, 1875, 30,000 corn, paid for cash, $23,755.92, and state the circumstances attending that charge.

A. This was 30,000 corn that we had bought for May delivery for Mr. Foote. There was quite a heavy loss on it, and Mr. Hooker wanted we should take it in and carry it; he was sure that

351 corn was going to be a good deal higher. We took it in and

paid for it—paid $23,755.92; we carried it for quite a long while in May, and then sold it out for June. We continued to carry till June 1st, when we delivered it to the parties we had it sold to, and got paid for it again. It was Mr. Foote's corn; corn that we had bought for Mr. Foote on May delivery and some time during that month. I don't remember the date. I could tell if I had the option book; it was sold for June delivery, so we carried it a full month.

Q. Did you carry that property for Mr. Foote?

A. For Mr. Foote.

Q. Mr. Hooker, in his testimony, on page 55, states that that was a trumped-up charge against Mr. Foote. State whether that is so.

A. Nothing of the kind. The option book shows that the corn was bought for the May delivery and sold for June delivery for Mr. Foote and no one else.

Q. Was the corn paid for, actually paid for, by your firm?

A. The corn was paid for, actually paid for.

Q. If Mr. Hooker directed that it should not be paid for at any time——

A. At his request it was taken in. He believed it was going to be worth a good deal more money. We had no corn bought for Canada parties at that time.

Q. Was Mr. Foote ever informed of purchases and sales made on his account?

A. He was.

352 Q. From time to time?

A. From time to time.

Q. By whom and when?

A. Sometimes by Mr. Hooker; sometimes he was notified from the office by mail; sometimes one of our men would take over the notice and leave it at the Tremont house for him.

Q. Please look at the exhibit and the charge under date of June 1st, 1875, which is for 250 tierces of lard, paid for, $12,600.62, and state the circumstances relative to that transaction.

A. That was taken in; that was bought for Mr. Foote, taken in and paid for, and carried a few days, then sold out again.

Q. Was it actually bought?

A. Actually bought for Mr. Foote.

Q. And paid for?

A. And paid for.

Q. Mr. Hooker testified on page 59 that he was satisfied you and Norton garbled the accounts of your firm with Mr. Foote. Please state whether that is a fact or not.

A. Not a word of truth in it.

Q. Do you know whether Mr. Norton ever garbled the accounts in any way?

A. I know he didn't, because he couldn't have done it without my knowing it.

Q. Please state if you ever had any conversation with Mr. Hooker respecting his going to New York to make certain settlements there with Fowler Brothers.

353 A. Yes, sir. His testimony is all false there, with the exception——

Q. Have you read his testimony?

A. Yes, sir; with the exception of his going to New York. I didn't write to Fowler Brothers; never wrote them a letter, and never went to Mr. Pearce about his going to New York.

Q. Mr. Hooker, on page 60, says that "Pearce told Lincoln, I think you had better send Hooker to New York; everybody has sympathy for him; they don't like Lincoln; they think Lincoln is not honest, which is the truth. So I packed my bag and went to New York." Please state whether you ever made any such remark attributed to you.

A. Not a word of truth in it; never went to Pearce about it. Hooker was very anxious to get the thing settled up; I got everything settled up, with the exception of Fowler Brothers. He was frightened almost to death for fear I couldn't get settled up, and he would get suspended from the board. I didn't care whether I was suspended or not. I wanted to get out of the business, anyhow. He wanted to go to New York to settle up the matter, and he went down there.

Q. Please state whether Mr. Tenney ever garbled or altered or changed in any way the books of your firm, or to your knowledge ever recommended they should be changed.

354 A. No; there never was the least thing of that kind; I called in Mr. Tenney to show him the statement of our accounts, and he looked them over, and he said, You have got a lot of stuff on your books, but it won't pay debts; and he figured it out that all we could realize upon in the shape of cash assets wouldn't pay over 33 cents, and we made that proposition to the creditors, and offered to show them the accounts and books, but they finally accepted.

Q. Are you familiar with the books of your firm?

A. I was.

Q. You say these exhibits are correct transcripts of the books?

A. They are correct. It would be a very singular operation to make Mr. Foote's account a good deal larger when we were trying to make a settlement for 33 and one-third per cent.

Q. Did Mr. Hooker ever at any time say to you that any of the charges appearing upon the books of your firm against Mr. Foote were wrong or improper?

A. Never.

Q. Do you know whether Mr. Foote was ever called upon for margins?

A. I know Mr. Hooker said he called on him for margins, and I know I sent Mr. Geltmacher to call on him, and he went and saw him. I never went after him myself.

355 Q. Did you know when the injunction against your firm was brought by Mr. Foote?

A. I think about the middle of January, 1877.

Q. At the time the Couch-estate notes were delivered to the Third National bank? Have you ever heard from Mr. Foote or from Mr.

Hooker or from any other person any objection to the transaction of your firm on the board of trade or any objection to your holding or transferring those notes to any one?

A. Never; not at that time.

Q. When did you first hear of any objection to the transactions of your firm on account of Mr. Foote?

A. Not till the injunction was served.

Q. You say these Couch-estate notes were delivered the same day of the note which has just been introduced in evidence, December 30th, 1876?

A. Yes, sir.

Q. When was the Couch-estate note given to Mr. Pearce as assignee of the firm of S. G. Hooker & Company?

A. At the time he was appointed assignee or chosen assignee. I think it was in February, 1877; I am not positive about that; but it was not until after the injunction, at any rate, some time.

Q. Please look on page 63, at the last question and answer of Mr. Hooker's testimony, and state whether the facts there stated
356 were true. (Reading question and answer.) State whether you had any conversation with Mr. Hooker at the time referred to after the injunction or at any other time with reference to the statements made by him.

A. Not a word of truth in the whole statement. Mr. Hooker never came to see me and had any such talk with me at all. Mr. Pearce was not the assignee at that time. The two notes were in the hands of the Third National bank some time before that; couple of weeks before that.

Q. Did you ever have any conversation similar to what he refers to at any other time?

A. Never a word.

Q. When was Mr. Pearce made assignee—after the injunction suit?

A. After the injunction; quite awhile after. I think a month or more. There is not a word of truth in the whole statement.

Q. Just state more fully than you have, Mr. Lincoln, the circumstances attending the giving of the two Couch-estate notes to the Third National bank on the day which you have stated you delivered them.

A. Mr. Paschall and I went up there with the note that we had made. The president of the bank refused to take it without more security. He wanted some of those Couch-estate notes, so he insisted upon it, and I went back and got him two of those notes and took up there.

357 Q. When do you say Mr. Pearce refused, when you and Mr. Paschall went to the bank?

A. That was the day we delivered the note.

Q. What part of the day?

A. I couldn't tell now; must have been some time in the afternoon, first time.

Q. And then when did you give the notes?

A. Probably a little later; before we got around I think the bank was closed.

Q. You went twice in the same day?
A. Yes, sir.
Q. You first went down without the two Couch-estate notes?
A. Yes, sir.
Q. Afterwards you went and delivered these two Couch-estate notes?
A. Yes.
Q. To Mr. Pearce, in the afternoon of that same day?
A. Yes.
Q. December 30th, 1876?
A. Yes, sir.

By agreement of counsel, the taking of further testimony is adjourned to some time to be agreed upon by counsel.

358 DECEMBER 16TH, 1885.

Examination resumed pursuant to agreement.

Cross-examination of GEORGE D. LINCOLN by Mr. BISBEE:

Q. When did you say the firm of S. G. Hooker & Company was organized?
A. It was organized when I went into it. It was organized before that.
Q. When did you go into the firm?
A. Fall of 1871.
Q. What time in the fall?
A. I do not recollect just the date.
Q. What month?
A. I think about November.
Q. You say you put in $10,000 cash?
A. At first.
Q. And Hooker put in nothing?
A. Nothing.
Q. When did you put in any more?
A. From time to time. I do not recollect. When the firm wanted money and I had it.
Q. How much capital did you put in in all during the existance of the firm?
A. Something over $30,000.
Q. More than you drew out?
A. Yes, sir.
Q. Did you put it in in cash?
A. Yes, sir.
359 Q. You never kept an account of when you put it in and when you drew it out?
A. Nothing, unless it is on the books.
Q. Can you show that by the books?
A. I could if I had the books here.
Q. The books are all in the master's office?
A. One book is gone. I do not know what has become of it.
Q. What book?

A. The first book; the book they had when I went in the firm.
Q. It is not here?
A. No. When I took the books out of Hooker's office—they laid in Hooker's office for 6 or 8 —, as long as he was in partnership with Smith—they were in the office under his control, in his vault. When I went there and got them that first book was gone. I never have seen it since.
Q. What did you go there to get them for?
A. We made an assignment to Mr. Pearce.
Q. The books were turned over to Mr. Pearce at that time?
A. All that I could find of them.
Q. Is there a ledger account on the books here in the master's office?
A. It was the ledger that we lost.
Q. There are other ledgers here?
A. Yes, sir.
Q. Don't they show your balance brought forward?
A. Yes, sir.
Q. Can't you state from them how much you put in exactly, and when?
A. No; because part of them—my account might be partly commissions; it might be necessary to go back.
360 Q. When did you put in any other money after November, 1871?
A. I couldn't give the dates for I hav'n't a memorandum of it, only from these record books.
Q. Did Mr. Hooker ever put any money into the firm?
A. No.
Q. Not a dollar?
A. Not a dollar.
Q. The firm, then, had no capital except what you put in?
A. That was all.
Q. The books show, or did show, all that you put in, and when?
A. Yes, sir.
Q. And how much you drew out, and when?
A. Yes, sir; also the commissions divided up and carried to our credits.
Q. Did you include that commission as part of the capital of which you testified?
A. No, this was actual money I put in outside of the earnings of the firm.
Q. When did you commence trading for Ira Foote?
A. Some time in 1874; I do not recollect the exact date.
Q. What time?
A. I should say the fall of 1874.
Q. About November, 1874?
A. I should presume that was about the date.
Q. Whose customer was he?
A. He made his arrangements, I suppose, with Hooker.
Q. With Stephen G. Hooker?
A. I suppose so.

Q. He didn't make any arrangements about trading with you?
A. No.
Q. Did you know him prior to that time?
361 A. I did not.
Q. Mr. Hooker had been a member of the board of trade for how long?
A. I do not know.
Q. For some time, had he not?
A. Yes, sir.
Q. For some years?
A. Yes, sir; I think so.
Q. Fifteen or twenty years, in your opinion?
A. I couldn't say.
Q. Hav'n't you any knowledge about it?
A. Not the least knowledge. I knew he was a member at that time and had been for years. I had not known him but a few years, but I knew he was a member there, but when he became a member there I do not know.
Q. In the account you put in the other day the first item reads in this way: "November 7, 1874, to difference on 15,000 wheat bought November, changed to December, $400." Who bought that 15,000 bushels wheat?
A. Some one of the firm—the clerks; I do not know which one.
Q. Have you any recollection about it at all?
A. No.
Q. Not the slightest?
A. Not the slightest.
Q. Have you any recollection about the transaction?
A No, sir; only what the books show.
Q. Have you any personal recollection concerning it one way or the other?
A. I couldn't have, as much business as we were doing.
362 Q. What is the meaning of the language in that account—"bought November, changed to December"?
A. We bought the grain for November delivery, and before it became due, or at the time—I do not know which this case will be, at or before the delivery day—we sold out the November and bought December in the place of it.
Q. You did that before the wheat was delivered?
A. At the time or before.
Q. Before the maturity of the contract to deliver?
A. It might have been.
Q. Do you know whether it was or not?
A. No; I could tell by looking at that book.
Q. I *have* you the option book kept by S. G. Hooker & Company at that time; please refer to this item in that book.
A. I do not seem to find that, but it is evident that it was changed from the November deal to a December; he lost $400 in the change, and then he made $1,025 on the December deal.
Q. How do you know he did?
A. According to this account.

Q. Have you any recollection about it?
A. He is credited with $1,025.
Q. You are reading from the printed slip?
A. I am.
Q. I want you to answer my question. You have been testifying that it is evident that he made $1,025; will you please show me something on the books about it?
A. I have not been able to find it here, but it might have been on the book before this one.
Q. When does this option book that you have been examining commence—what is the first date in it?
A. The first day of July, 1874.
363 Q. 1874 is the first entry in the book?
A. That is what it says there.
Q. What is the date of the last entry?
A. May 29th, 1876.
Q. And what is the book?
A. It is the option book.
Q. Who kept that book?
A. J. B. Norton most of the time.
Q. Was it a book of S. G. Hooker & Company?
A. Yes, sir.
Q. The option book of S. G. Hooker?
A. Yes, sir.
Q. Was any other option book kept by S. G. Hooker & Company between the dates named?
A. There might have been one extended into this from the other book and after the trades were all settled up in the other book; they might for some time have run together.
Q. At the very commencement of this book?
A. Yes, sir; for quite a little while.
Q. Was this the regular option book kept between the fall of 1874 and spring of 1876 by them?
A. Yes; there was only one ahead of this, which trades lapsed into this.
Q. Nothing followed it?
A. No, sir.
Q. And this is the regular option book?
A. Yes, sir.
Q. It was kept by whom?
A. J. B. Norton mostly; occasionally other parties' figures are there.
364 Q. And under whose direction was this book kept?
A. J. B. Norton's.
Q. Was it kept under your direction?
A. Not specially; any more than Hooker's.
Q. Did you while a member of the firm of S. G. Hooker & Company take charge of the books of that company?
A. Not fully. I did to a certain extent.
Q. Did you not in a general sense?
A. To a certain extent I did. I looked after it.

Q. You say you looked after it?
A. To a certain extent.
Q. And the books were kept largely under your direction?
A. No; I didn't direct anything about the books, but I looked after them occasionally to see if they were all right.
Q. You looked after this option book with the rest?
A. I presume I did. It is a good while ago.
Q. Do you remember anything about it?
A. No; not particularly.
Q. Well, is this option book perfect in every particular?
A. I think it is.
Q. Kept in the regular course of business, wasn't it?
A. Yes, sir.
Q. And what it shows you say is truthful?
A. I think so.
Q. You have no recollection yourself in relation to any specific trade that was made for Foote?
A. No, sir; not any particular one. I knew that we traded for him.
Q. That is all you remember?
A. Yes; and I think by taking time I could find this iden-
365 tical item. I do not believe we credited him with $1,000 there if he didn't make it on that $15,000 wheat.
Q. Do you think you charged him with the $400 loss in the changing over, if he didn't lose it?
A. I am satisfied we did not. I see in there that 1874 commences further over there again, if you are looking for that.
Q. Mr. Lincoln, please examine the option book about which you have been testifying and state if you find any transaction upon said book for the account of Ira Foote until page 40 of said book, under date of March 25th, 1875.
A. I find here December 14th, 1874–'5, wheat bought seller February, page 92.
Q. I asked you some time ago if, commencing at the beginning of this option book up to page 40, *if* you find any article bought or sold for the account of Ira Foote?
A. I would have to look it over first to see that. I don't see any. This is all seller pork and lard up to this page. There is no wheat in there that I see.
Q. You may state what transaction the firm of S. G. Hooker & Company had for the account for Ira Foote on the 25th day of March, 1875, if any.
A. We bought 250 tierces of lard for his account.
Q. On that day?
A. On that day.
Q. Do you remember anything about that?
A. Only what it shows there.
Q. Do you know anything about it, excepting what you see on the book now before you?
A. No; I couldn't tell the special trades back 10 years ago.
366 Q. Do you know how the order got in your office for Mr. Foote?

A. I do not.
Q. You don't know anything about that?
A. No.
Q. Who made that trade on the floor of the board of trade?
A. Norton made that.
Q. How do you know?
A. That is according to the way the books are kept; his initials are here—he bought it.
Q. He bought it on the floor——
A. Of P. P. Oldershaw.
Q. 250 tierces lard——
A. Seller June, of P. P. Oldershaw.
Q. For seller June and you paid how much?
A. $14.25.
Q. A hundred pounds, did you?
A. Yes, sir.
Q. And that lard was to be delivered to you in the month of June?
A. In the month of June.
Q. At the seller's option?
A. At the seller's option.
Q. And that was done upon the order of Mr. Foote?
A. I suppose so; we couldn't have done it if we had not had his order.
Q. Read the red ink in the margin of that order to the reporter just as it is.
A. "Settled April 15, No. 210."
Q. What does the 210 mean?
A. Settled with the number on the opposite page with some other party that we could ring it up with No. 210; settled
367 with J. K. Fisher & Company.
Q. What day was it settled?
A. April 15th—same day as this—1875.
Q. You say that you bought 250 tierces lard on the 25th day of March, 1875, to be delivered to you by Mr. Oldershaw in the month of June of that year at $14.25 per hundred pounds. Now when did Mr. Foote order your firm, if ever, to sell that lard?
A. On March 29th.
Q. On March 29th?
A. Of the same year.
Q. How do you know that he ordered you to sell it?
A. We would not have sold it if he had not ordered it done.
Q. Do you remember anything about it?
A. No.
Q. Do you know that he gave any order at all about it?
A. No.
Q. Do you know anything about it except what you see upon the book before you?
A. Nothing at all.
Q. Nothing whatever?

A. No; my memory is not good enough to remember all those transactions back 10 years.

Q. You say on the 29th day of March you sold that?

A. Yes, sir.

Q. That is 4 days after it was bought?

A. Yes, sir.

Q. To be delivered in June?

A. Delivered in June; sold to J. N. Maynard.

Q. About 3 months after you bought it, it was to be delivered?

368 A. Yes, sir.

Q. And you sold it 4 days after you bought it, did you?

A. Yes, sir.

Q. Was that lard ever delivered to you?

A. No; this was settled up by a ring.

Q. Ever delivered to Mr. Foote?

A. No; it was settled up by a ring; never was brought in; settled up.

Q. Did you ever receive that lard from any person?

A. No; not this particular lot.

Q. Was that a profit or a loss to Mr. Foote?

A. That was a profit.

Q. How much?

A. About $240, less the commission.

Q. Less the commission?

A. Yes, sir; I think; I reckoned it in my head. That is correct; $240.

Q. You credited Mr. Foote in that transaction, did you, the difference between what you bought that lard for on the 25th of March and what you sold it for on the 29th of the same month?

A. Yes, sir.

Q. Although the lard was to be delivered in the month of June following?

A. Yes, sir; we had got it rung up and settled, and collected the difference.

Q. You rung it up and settled it?

A. Yes, sir.

Q. Collected the difference. There was no delivery to you?

A. Not in that particular lot.

Q. In either way, when you bought it or when you sold it?

369 A. No; not in that particular lot.

Q. And you credited Mr. Foote the difference of $240, did you?

A. Yes, sir.

Q. Under date of April 19th?

A. Yes, sir; that is what this says.

Q. 1875?

A. Yes, sir.

Q. And the item in this account of the credit under that date is that item of $240?

A. Yes, sir.

Q. Following along upon said option book from the transaction about which you have just testified—250 tierces of lard—do you find the next transaction in order upon said book, on page 42, at the bottom of the page?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. When was that transaction?

A. That was April 21th; bought 500 tierces of lard; seller, June; from W. & J. Rogan, $15.60.

Q. Who did that business?

A. Hooker bought that, according to this.

Q. Have you any recollection whatever about that transaction?

A. Nothing; only what——

Q. Only what appears on the book before you?

A. Only what appears on the book.

Q. You say Hooker himself did that business?

A. According to the initials underneath.

Q. And you believe that to be true?

A. Yes, sir.

Q. Who communicated the order to your firm?

370 A. I suppose Hooker did.

Q. Do you know anything about it?

A. No; he probably had the order.

Q. Did Mr. Foote give that order to Mr. Hooker?

A. I couldn't tell any particular order.

Q. I am asking about this?

A. I couldn't tell any particular order.

Q. You don't know anything about that?

A. Not any particular orders.

Q. Mr. Lincoln, that 500 tierces of lard was bought on April 21st of W. & J. Rogan at what price?

A. $15.60.

Q. Per 100 pounds?

A. Yes, sir.

Q. Delivered when?

A. June.

Q. June following this April?

A. Yes, sir.

Q. Now read what is in the margin in red ink on the option book in relation to that transaction.

A. "250 settled May 11; No. 229. 250 settled May 21; No. 248."

Q. What does that mean—250 settled May 11; 250 settled May 21?

A. Lard has to be settled in 250-tierce lots; lard has to be settled in that way.

Q. Did you settle this deal?

A. Yes, sir.

Q. Settled it all?

A. That was all rung up the same as the other.

Q. It was not delivered?

A. No.

371 Q. When did you get an order to sell that lard?

A. On May 28th.

Q. Who communicated that order?

A. I don't know.

Q. Have you any recollection whatever about it?

A. No.

Q. Not the slightest?

A. No.

Q. Who sold that lard on 'change?

A. Hooker's initials are against it.

Q. Who sold it?

A. I suppose he did, by his initials being there.

Q. What do you think about it?

A. I think he did.

Q. You think S. G. Hooker sold that himself?

A. Yes, sir; to W. & J. Rogan, the same it was bought from.

Q. The same parties?

A. Yes, sir.

Q. Then Mr. Foote bought this 500 lard through you of Rogan for June delivery on the 21st of April, 1875, and sold it to the same parties—W. & J. Rogan—the 28th of May, 1875. Did he make or lose on that?

A. Lost.

Q. How much did he lose?

A. $2,560.

Q. There was no delivery in that case?

A. No, sir.

Q. Either way?

A. No; it was rung up.

Q. Was it rung up with Rogan himself?

372 A. No; the purchaser. He was rung up with some other deals we had.

Q. When did you ring up the purchase?

A. That is what I gave you—May 11th and May 25th.

Q. Who did you ring that up with?

A. That was with Rogan himself; that was direct.

Q. That is, you contracted on the 21st of April with Rogan to buy 250 tierces of lard, deliverable in June, and on the 28th of May you had an order from Foote to sell this lard and you did sell it back to Rogan?

A. Yes, sir.

Q. The same lard?

A. Yes, sir.

Q. How did you ring up 250 of this on the 10th, before he ordered it sold?

A. In the meantime we had two direct trades with him; some sold to him, some bought of him, and of course by the rules we always settled them by——

Q. What is that rule that you speak of?

A. The rule we have for ringing up the trades there?

Q. Please show it to me.

A. I suppose it is not in the rules there.

Q. I show you now the rules of the board of trade. Please point me out that rule.

A. I don't know as it comes under those heads or not.

Q. Is not this the fact, that when you ring up a trade for a customer that you must put another trade in its place; is not that the rule?

A. We have another in its place.

Q. Where is it? Show it to me.

A. We rung up for one of his with that one.

373 Q. With what one?

A. One of the 250 we bought of Rogan for Foote. We settled by ringing up with the sale that we made to Rogan of 250 for another party.

Q. When?

—. The sale was made May 10th for the other parties. We settled it May 11th.

Q. It is true, is it not, that you having bought some 250 lard of Rogan for Foote, and having sold 250 to Rogan on the 10th of May for the account of Ellmore & Company that you settled with Rogan and wiped both of them out?

A. We paid the difference.

Q. Did you wipe out the two trades or not?

A. We settled them up by paying differences.

Q. And paid the difference to Rogan?

A. Yes, sir.

Q. Then after you paid the difference you had no lard bought for the account of Foote, did you?

A. Yes, sir; this Culbertson & Brothers bought for Foote.

Q. How do you know?

A. It stood in the place of his.

Q. How do you know?

A. It couldn't be otherwise. Rather the Roloson ——

Q. That was bought for the account of Ellmore.

A. We settled Ellmore's sale and Foote's purchase.

Q. Now, then, didn't you have other customers besides Foote?

A. Yes.

Q. And Ellmore?

A. Yes.

374 Q. Had several others, didn't you?

A. Yes.

Q. Why do you tell me you substitute another contract in the place of that one for Foote?

A. We settled this 250 bought of Rogan for Foote with 250 sold to Rogan for Ellmore; that settled this 250. Then it leaves us this other one open that we bought for Ellmore—I refer now to the third entry from the bottom of page 42 as the other one. That was not settled till the end of the time, till the time was up, and delivered in cash.

Q. If the other 250 tierces lard bought on the 13th day of April

from R. W. Roloson for the account of H. E. Ellmore, why and how are you going to take that transaction for Foote?

A. We had just as many purchases open as we had customers that we got bought for; it may not be the same identical purchase, but we have the same number.

Q. Why did you tell me that you had that H. E. Ellmore trade substituted in the place of the lard you bought of Rogan?

A. Because we had settled that one of Rogan with another one that we had sold to Rogan.

Q. That is, you settled off the contract of purchase you made for the account of Foote, wiped it out of existance, hadn't you?

A. No, not exactly; it leaves us the 250 bought that we placed to Foote's account.

Q. But you say you did, on the 21st of April, buy 500 tierces of June lard of Rogan for the account of Foote?

A. Yes.

Q. Now you say that Foote gave you an order to sell that on the 28th of May following. Before that, on the 10th of May, you had rung up 250 of this lard, had you not?

375 A. Yes.

Q. After it is rung up it can't be delivered, can it?

A. Not that particular lard; we have 250 coming in there in the place of the one we sold; we were never long and never short.

Q. In relation, however, to this particular lard, you rung it up before Foote ordered you to sell it, didn't you?

A. Yes, sir.

Q. Did you collect the difference when you rung it up?

A. No; paid out the difference.

Q. And now, then, do you say, Mr. Lincoln, that you substituted some identical transaction in the place of it?

A. No; I don't think I could say that any particular one, but we always had one open in the place of it.

Q. If you substituted any particular transaction in the place of that I want you to tell what it was.

A. That I couldn't do.

Q. It is impossible to do it?

A. But we had one coming to take the place of it.

Q. I am talking about some particular transaction; did you do that?

A. No; I don't think we did.

Q. Did you ever see it done in your life on the board, in all of your experience these long weary years; did you ever know it to be done?

A. No; I don't think we did; we always had a trade open to take the place of it, the one that we settled up.

Q. Now, then, can you point out what trade you had, who you had bought it of, to take the place of the one you rung up?

A. We would settle—suppose that that was the one we left
376 open to take the place of that, that is because they have not settled till after Foote had sold.

Q. You have lots of other transactions here, open?

A. I presume so.

Q. Just run your eye up this page; didn't you have a purchase on the 12th of April of Fowler Brothers; another one of Fowler Brothers the 12th of April, same day?

A. I presume so.

Q. Don't you know you did; can't you read it?

A. Yes, of course.

Q. Did you have on April 10th Manard, account of——

A. Yes.

Q. One on April 16th?

A. But those are all bought before this was, and they might have been settled up—I don't know—before this was bought.

Q. Is there any way that you can tell what trade you put in the place of the one you rung up for Foote?

A. Not positively, but I should say that that was the trade.

Q. You would say that one?

A. Yes, sir; third one from the bottom, R. W. Roloson.

Q. Can you tell me anything to indicate that you substituted that trade you bought of Ellmore in the place of Foote's?

A. Foot- didn't sell his till the 28th of May. This was not settled at all; delivered cash on the first day of June, so they didn't settle—kept open all the time after Foote was sold out.

Q. Delivered cash. Yet you say Foote ordered his sold out on the 28th of May?

A. Very true.

577 Q. If you had this bought for Foote, substituted this Ellmore contract for Foote's contract, how is it it was delivered to you after Foot sold it out?

A. Because we couldn't ring it.

Q. If you substituted Ellmore's 250 tierces lard for Foote's, whose did you substitute for the Ellmore transaction here; who did you put in there? Give it up, don't you?

A. No, not yet. Ellmore was even on those trades; we didn't have to substitute anything for him; he had bought and he had sold before this ringing up was done. We rung up his with Rogan's and left Roloson's open for Foote.

Q. Do you remember anything about this transaction?

A. Nothing whatever.

Q. Have you anything to indicate that the Roloson trade was put down for Foote?

A. Nothing.

Q. Have you any memorandum or anything to that effect?

A. I don't know as there is.

Q. I will ask you again to state if you ever in your life, in all your business experience on the board of trade, knew of some particular transaction where a customer's deal was rung up, to be substituted in the place of it?

A. No.

Q. Never did?

A. Don't think I ever did know of any particular trade, but there is always a trade left open for the——

Q. Now you say you never knew such a transaction in all your experience. Is there anything on the books to indicate that the Roloson lard was substituted in the place of Rogan's for Foote.

A. No more than it was carried to the first of July till after his was sold out and delivered cash.

378 Q. Did Foote's name appear in the Roloson transaction?

A. No, sir.

Q. Any indications whatever?

A. No.

Q. Do you remember anything about the buying of that lard of Roloson?

A. No.

Q. You have not the slightest recollection about it, one way or the other?

A. No.

Q. Who was Ellmore?

A. I don't recollect him at all; a customer of ours.

Q. That is all you know?

A. Yes.

Q. You don't know who he was or where he lived?

A. No; couldn't without going back and looking up.

Q. Now, then, there was no delivery in June of this lard that you bought of Rogan for the account of Foote, was there?

A. No.

Q. No delivery or sale made for him on the 28th of May of that same lard, was there?

A. No; the sale to Rogan was settled up by a purchase of Rogan on April 23d, shown by the third entry on page 44.

Q. That was offset, then, was it?

A. Yes, sir.

Q. And there was no delivery there?

A. No delivery, only——

Q. It was wiped out—the purchase and sale was—with Rogan?

A. Yes, sir; a settlement.

Q. This money that was paid out here for the account
379–399 of Foote on this 500 tierces lard transaction under date of April 21st was simply payment of a difference, was it?

A. Yes, sir.

Q. Nothing else?

A. Payment of a difference on a contract.

Q. There was nothing paid for—no lard paid for?

A. No.

Q. When you sold nor when you purchased?

A. It was settled up.

Q. And you paid the difference?

A. Yes, sir.

Q. And you charged that difference? It is included in the item, is it not, that I am about to read in the account? "June 1st, difference, commissions, 750 June lard, $4,137.30."

A. It probably goes in that account.

Q. In that item?

A. In that item, because this is the account of June 1st.

Q. The other 250 of this lard bought on the 12th of April for Foote was rung up on the 20th day of May, was it?

A. I think it was May 20th.

Q. That of May 20th was when you had sold W. & J. Rogan 250 tierces June lard for the account of H. Aylwin, was it not?

A. Yes, sir.

Q. That is, you had sold Rogan for the account of Aylwin 250 tierces lard for June delivery?

A. Yes, sir.

Q. And you rung up the other 250 of the Foote lard with Rogan, and thereby wiped out of existence the purchase you had made for the account of Foote to Aylwin, and the sale you had made
400 for the account of Aylwin to Rogan. Is that correct?

A. Yes, sir.

Q. And you settled the difference?

A. Yes, sir.

Q. That is all there was to that transaction?

A. Yes, sir.

Q. State if your firm bought any wheat for the account of Foote on the 11th day of January, 1875.

A. Yes, sir.

Q. How much did you buy?

Q. 5,000 bushels 2 wheat, seller March 89, and ¾, S. B. Webber.

Q. Have you any recollection about the transaction?

A. No.

Q. None whatever?

A. No.

Q. All you know about it is what appears on the option book, is it?

A. All I know is what appears on the option book.

Q. That wheat was bought for delivery in March?

A. Delivery in March.

Q. Was it delivered?

A. No; that was settled.

Q. When did Foote order you to sell that wheat out?

A. February 25th.

Q. Same year?

A. Same year.

Q. Before March arrived?

A. Yes, sir.

Q. Do you remember anything about that order?

A. No.

Q. None whatever?

401 A. It was sold to W. E. McHenry February 25th; 84 and ½, a direct settlement.

Q. Now, then, did you ever take that wheat in and pay for it?

A. No.

Q. Did you ever deliver wheat out that he ordered you to sell and collect pay for it?

A. No.

Q. How did you close up that transaction?
A. Rung it up on February 27th.
Q. How did you ring it up?
A. By making the ring as they do there and paying the difference on it.
Q. Who did you pay the difference to?
A. Probably went to S. W. Webber.
Q. Do you know anything about it?
A. No.
Q. Why do you say probably went to S. W. Webber?
A. Because he has got it sold a good deal higher that we have got it sold at.
Q. How many parties were there in that ring?
A. I don't recollect now.
Q. Can you tell anything about it from the books?
A. No.
Q. May have been 5 or 6 parties in that ring that time?
A. Yes, sir.
Q. If there were 5 or 6, what inference is there that S. W. Webber got the money?
A. He was the highest price of our two. It is not certain that he got the whole of it; he may have got it sold between the two.
Q. You may have paid the money to somebody else?
402 A. We might have paid it to two or three different parties.
Q. You don't know anything about it?
A. No.
Q. The books don't show anything about it?
A. No.
Q. You can't tell?
A. No.
Q. You rendered that account of sale when?
A. March 1st, 1875.
Q. And you charged Foote up on that transaction, did you, difference and commission on 5,000 wheat, $287.50?
A. Yes, sir; that is what he lost and what we paid out to settle.
Q. Who did you pay it to?
A. I couldn't tell.
Q. Are there any entries on your books to show who you paid it to?
A. No; we never kept those figures.
Q. You don't know anything about it?
A. No.
Q. Don't know who you drew your checks to?
A. No.
Q. Have you any recollection of drawing those checks?
A. No.
Q. Have you any recollection at all about the ring?
A. Not the least.
Q. Not the slightest?
A. No.

Q. Don't you know anything about it except what appears on the option book?

A. Only what appears on the books. I couldn't remember the different rings of all the business we were doing at that time.

403 Q. Most all the property went through rings, didn't it?

A. No; not most all, but a good deal.

Q. A large proportion?

A. No; I think not.

Q. Not half of it?

A. No; I think not.

Q. Not half of what you dealt in was rung up?

A. No; I think not.

Q. On page 104 of the option book it says that you bought on February 1st 5,000 wheat for Foote for April delivery at 90 cents a bushel. Is that true?

A. I have no doubt but what it is; the book says so.

Q. You don't remember anything about it?

A. No.

Q. On the 16th of March you sold it to Cooley, Dwight & Company at 94 and $\frac{3}{4}$ cents a bushel?

A. Yes, sir.

Q. Sold it before the time of delivery arrived, did you?

A. Yes, sir.

Q. And you credited Foote the difference, did you—profit?

A. Yes, sir.

Q. Lyon, Lester & Company never delivered that wheat to you?

A. No.

Q. You settled it off?

A. Yes, sir.

Q. Rung it up, didn't you?

A. Yes, sir; rung it up direct with the same parties.

Q. And who did you keep that difference from?

A. I don't recollect.

404 Q. Who paid you that money?

A. I have no means of telling.

Q. Your books wouldn't show, would they?

A. No. Cash book might show, perhaps.

Q. In an item where you credited Mr. Foote with a difference of 30,000 bushels wheat, $1,050, this 5,000 is included in that, isn't it—in that 30,000 bushels?

A. Yes, sir.

Q. Now, on the same page of the option book there was another 5,000 bought for Foote of P. S. Melloy, February 4th, for delivery in April?

A. Yes, sir.

Q. And that same wheat was sold on March 16th, was it, to Cook, Cooley, Dwight & Company?

A. Yes, sir.

Q. Were there any deliveries either way of that wheat?

A. No.

Q. It was rung up, wasn't it?

Q. How did you close up that transaction?
A. Rung it up on February 27th.
Q. How did you ring it up?
A. By making the ring as they do there and paying the difference on it.
Q. Who did you pay the difference to?
A. Probably went to S. W. Webber.
Q. Do you know anything about it?
A. No.
Q. Why do you say probably went to S. W. Webber?
A. Because he has got it sold a good deal higher that we have got it sold at.
Q. How many parties were there in that ring?
A. I don't recollect now.
Q. Can you tell anything about it from the books?
A. No.
Q. May have been 5 or 6 parties in that ring that time?
A. Yes, sir.
Q. If there were 5 or 6, what inference is there that S. W. Webber got the money?
A. He was the highest price of our two. It is not certain that he got the whole of it; he may have got it sold between the two.
Q. You may have paid the money to somebody else?
402 A. We might have paid it to two or three different parties.
Q. You don't know anything about it?
A. No.
Q. The books don't show anything about it?
A. No.
Q. You can't tell?
A. No.
Q. You rendered that account of sale when?
A. March 1st, 1875.
Q. And you charged Foote up on that transaction, did you, difference and commission on 5,000 wheat, $287.50?
A. Yes, sir; that is what he lost and what we paid out to settle.
Q. Who did you pay it to?
A. I couldn't tell.
Q. Are there any entries on your books to show who you paid it to?
A. No; we never kept those figures.
Q. You don't know anything about it?
A. No.
Q. Don't know who you drew your checks to?
A. No.
Q. Have you any recollection of drawing those checks?
A. No.
Q. Have you any recollection at all about the ring?
A. Not the least.
Q. Not the slightest?
A. No.

Q. Don't you know anything about it except what appears on the option book?

A. Only what appears on the books. I couldn't remember the different rings of all the business we were doing at that time.

403 Q. Most all the property went through rings, didn't it?

A. No; not most all, but a good deal.

Q. A large proportion?

A. No; I think not.

Q. Not half of it?

A. No; I think not.

Q. Not half of what you dealt in was rung up?

A. No; I think not.

Q. On page 104 of the option book it says that you bought on February 1st 5,000 wheat for Foote for April delivery at 90 cents a bushel. Is that true?

A. I have no doubt but what it is; the book says so.

Q. You don't remember anything about it?

A. No.

Q. On the 16th of March you sold it to Cooley, Dwight & Company at 94 and ¾ cents a bushel?

A. Yes, sir.

Q. Sold it before the time of delivery arrived, did you?

A. Yes, sir.

Q. And you credited Foote the difference, did you—profit?

A. Yes, sir.

Q. Lyon, Lester & Company never delivered that wheat to you?

A. No.

Q. You settled it off?

A. Yes, sir.

Q. Rung it up, didn't you?

A. Yes, sir; rung it up direct with the same parties.

Q. And who did you keep that difference from?

A. I don't recollect.

404 Q. Who paid you that money?

A. I have no means of telling.

Q. Your books wouldn't show, would they?

A. No. Cash book might show, perhaps.

Q. In an item where you credited Mr. Foote with a difference of 30,000 bushels wheat, $1,050, this 5,000 is included in that, isn't it—in that 30,000 bushels?

A. Yes, sir.

Q. Now, on the same page of the option book there was another 5,000 bought for Foote of P. S. Melloy, February 4th, for delivery in April?

A. Yes, sir.

Q. And that same wheat was sold on March 16th, was it, to Cook, Cooley, Dwight & Company?

A. Yes, sir.

Q. Were there any deliveries either way of that wheat?

A. No.

Q. It was rung up, wasn't it?

A. Yes, sir.
Q. Settled by differences?
A. Yes.
Q. There was a profit to Foote on that transaction?
A. Yes.
Q. You collected the difference, didn't you?
A. Yes.
Q. You didn't deliver any wheat or receive any, did you?
A. Not in that case.
Q. Did you, on the 5th of February, purchase for the account of Foote 5,000 bushels wheat for April delivery?

A. Yes.

405 Q. And did you sell the same wheat on the 16th day of March, 1875?

A. Yes, sir.
Q. Were there any deliveries in that case?
A. No.
Q. Rung up both ways, both purchase and sale?
A. Yes.
Q. You collected the difference?
A. Yes.
Q. And placed it to the credit of Mr. Foote?
A. Yes, sir.
Q. You don't remember anything about those transactions except what the books show?
A. Only what the books show.
Q. And also did you, on the 6th of February, buy 5,000 — wheat of H. J. Slater, for delivery in the month of May?
A. Yes.
Q. And you sold that wheat to Lyon, Lester & Company on the 6th of April?
A. Yes.
Q. Did you ring up both those trades?
A. Yes.
Q. No deliveries at all?
A. No.
Q. You collected the difference?
A. Yes.
Q. Who did you collect it of?
A. I can't tell.
Q. Don't you know anything about it?
A. No.

Q. Did you, on the 8th day of February, buy for Mr. Foote

406 5,000 bushels wheat, deliverable in May, of Cook, Cooley, Dwight & Company?

A. Yes, sir.
Q. And sold that out before May?
A. Sold it April 6th to Lyon, Lester & Company.
Q. And collected the difference?
A. Collected the difference.
Q. There was no delivery, was there?

A. No.
Q. Did you ring up the trades at both ends, both purchase and sale?
A. Both purchase and sale.
Q. You collected the difference?
A. Yes.
Q. And placed it to the credit of Mr. Foote?
A. Yes, sir.
Q. That is all there was of the transaction?
A. Yes, sir.
Q. Did you on the 20th of March buy 5,000 bushels of corn of Gilbert & Brega for Foote?
A. Yes, sir.
Q. And for May delivery?
A. Yes.
Q. Did you sell that same corn on the 24th of March?
A. Yes.
Q. Four days after you bought it?
A. Yes, sir; to the same parties.
Q. Same parties, Gilbert & Brega?
A. Yes, sir.
407 Q. And made a little profit on it?
A. Yes.
Q. Four cents a bushel on it, didn't you, less commissions?
A. Yes; less commissions; settled direct.
Q. Did you deliver any of that corn?
A. Settled direct.
Q. Did you receive any of it?
A. No.
Q. Simply collected that difference?
A. Yes, sir.
Q. Of 2 cents a bushel?
A. Yes.
Q. Took out your commission and credited the balance to Mr. Foote?
A. Yes.
Q. That is all there was of that transaction?
A. I don't see anything more to it.
Q. Was there a kernel of corn delivered or received anywhere?
A. Wouldn't have likely to be in that case where we bought it of Gilbert & Brega and sold it again before the time was up.
Q. And just collected the difference?
A. Yes, sir.
Q. On the 20th day of March, 1875, you bought 5,000 bushels corn for May delivery for Foote, did you?
A. Yes.
Q. And you sold it March 24th, did you?
A. Yes.
Q. Four days after you bought it?
A. Yes.

Q. That is, you bought it for Foote on March 20th, and he ordered you to sell it on the 24th of March?

408 A. Yes, sir.

Q. Now, then, when you sold it March 24th for him there had been no delivery, had there?

A. No; there couldn't have been.

Q. He was out of the transaction, wasn't he, so far as he was concerned?

A. After he got it bought and sold.

Q. He was out?

A. Yes.

Q. He had nothing more to do with the transaction, had he?

A. Nothing more than to collect what he made on it.

Q. That is the difference so far as he was concerned?

A. Yes, sir.

Q. Of between 3 and 4 cents a bushel?

A. Yes.

Q. That ended his transaction with it, didn't it?

A. Yes.

Q. On the 20th of March did you buy for Foote of W. P. McLaren & Company 5000 bushels wheat for April delivery?

A. Yes, sir.

Q. And on the first of April you sold that wheat to William Young & Company?

A. Yes.

Q. For 94 and $\frac{5}{8}$ cents a bushel?

A. Yes, sir.

Q. And there was a trifling loss to Mr. Foote on that transaction?

A. Yes, sir.

409 Q. Did Mr. Foote furnish any money with which to receive or pay for that wheat?

A. No, he did not.

Q. Not a cent?

A. No. We charged it to him.

Q. Now, Mr. Lincoln, did you on the 22nd of March, 1875, buy 5000 — wheat for Mr. Foote of W. Northrup & Company for April delivery?

A. Yes, sir.

Q. And he ordered it sold on the 31st of March?

A. Yes.

Q. He received a small profit, did he?

A. Yes, sir.

Q. One-eighth of a cent per bushel?

A. Yes, sir; after the commissions.

Q. That is all he had to do with it, was it?

A. Yes, sir; all we wanted him to do?

Q. He ordered it sold before the time of delivery?

A. Yes, sir; the day before.

Q. And you sold it?

A. We sold it.

Q. Did you, on the 27th day of March, buy of D. R. Brierly for Foote 5000 bushels corn for May delivery?
A. Yes, sir.
Q. Did he order that sold out before the time of delivery arrived?
A. Yes.
Q. You did sell on the 28th of April to D. W. Irwin & Company?
A. Yes.
Q. And there was a loss to Foote?
A. Small one.
410 Q. And you charged to him the loss, did you?
A. Yes, sir.
Q. Was it rung up, both purchase and sale rung up?
A. Those two were rung up.
Q. Both rung up?
A. Yes, sir.
Q. No delivery either way?
A. No deliveries.
Q. Now, then, on the 29th of March, 1875, did you buy 5,000 of Murray, Nelson & Company of May corn?
A. Yes, sir.
Q. And he ordered it sold out before May?
A. Yes.
Q. What day?
A. 28th.
Q. And you sold to D. W. Irwin & Company?
A. Yes, sir.
Q. And there was a trifling loss to Mr. Foote?
A. Yes.
Q. Which you charged to him?
A. Charged to him.
Q. And that ended his connection with it after he ordered you to sell it before the delivery?
A. Yes.
Q. He had nothing more to do with the transaction?
A. Only to pay the difference.
Q. Did you, on the 30th of March, buy of George Gale 5,000 bushels of corn on account of Foote for May delivery?
A. Yes.
Q. And did you sell that out before May arrived?
411 A. April 29th.
Q. Whose order?
A. Foote's.
Q. On Foote's order?
A. I suppose so.
Q. So that there was a little profit on that, was there?
A. Yes.
Q. And you credited that profit to Foote?
A. Yes, sir.
Q. He had nothing to do with the grain whatever, did he?
A. No.
Q. Was it delivered before or after Mr. Foote sold it out?

A. After he sold.
Q. Did Mr. Foote have anything to do with the delivery?
A. Not personally.
Q. Didn't he sell out the contract before the time of delivery arrived?
A. He had sold just as much as he had bought.
Q. And that ended his connection with it?
A. Not till it was settled up.
Q. Didn't his connection end when you had sold out that same corn for 29 cents?
A. We don't consider it so.
Q. Was it not so, in fact?
A. No; I don't look at it in that way.
Q. What did he have to do with it after he had bought 5,000 and sold 5,000?
A. Come in and get his profits.
Q. Get the difference between what you bought at and what you sold at?
412 A. Yes, sir.
Q. Is that all he had to do with it?
A. Yes, sir; I don't see anything further than that.
Q. Mr. Lincoln, did you buy 5,000 wheat for May delivery for Foote of M. C. Baker on the 31st of March?
A. Yes.
Q. Did Foote order that sold out before May arrived?
A. Sold out April 8th.
Q. What did you do on April 8th?
A. We sold it.
Q. To whom?
A. C. Gerstenberg.
Q. That ended his connection with it, did it?
A. Well, I don't really consider it ended his connection till it was settled up and he took what he had made.
Q. What did you do then with it?
A. We went on and settled it up.
Q. How did you settle it—make any delivery?
A. No.
Q. Receive anything?
A. No; rung it up.
Q. Both the purchase and sale, didn't you?
A. Yes, sir; and gave him a credit.
Q. That is, you credited him with the difference between what you agreed to pay and what you agreed to sell it for?
A. Yes, sir.
Q. And you rung it up; no delivery either way?
A. Not in that case.
Q. Did you on the first of April buy of William Young 5,000 May wheat for Mr. Foote?
413 A. Yes, sir.
Q. And did he keep that until May?
A. No; sold it out April 8th.

Q. Before May arrived?
A. Yes, sir.
Q. Who to?
A. T. H. Seymour & Company.
Q. When he sold it out that ended his connection with it, except to get his profits?
A. I don't consider he had anything to do with it at any time till he got his profits.
Q. That is all you had to do with him?
A. Yes, sir; that was delivered to us.
Q. But it was after he had sold out?
A. Yes; he had a contract for purchase and contract for sale.
Q. That 5,000 Young delivered to you after he had sold out and got credit for his difference?
A. No; he had no credit for difference till after it was delivered.
Q. Did he have anything to do with the delivery excepting to receive or pay the difference? Had he not sold it out himself?
A. Had nothing to do with it any way.
Q. You mean so far as you are concerned?
A. He stood behind the deal right straight along till it was settled up and he got credit or debit on it.
Q. Didn't he order that wheat sold out the 22nd before the maturity of the contract?
A. He ordered 5,000 wheat sold.
Q. Was it not that wheat?
414 A. I don't know.
Q. What wheat was it, then?
A. It was an off-set for that wheat.
Q. That is, he bought 5,000 of Young & Company through you in April?
A. Yes.
Q. For May delivery?
A. Yes, sir.
Q. And he sold 5,000 April 8th for May delivery?
A. Yes, sir.
Q. Didn't that end his connection with it, excepting to get his profits or pay losses?
A. No; I don't really think it did, because he got no account of it until in May.
Q. What more did Mr. Foote have to do with it?
A. Just as much as he had to do any time. He had nothing to do with it any time, only to give orders to buy and sell.
Q. Didn't he have to do with it until he had given an order to sell out his contract?
A. He was not out of it then.
Q. What did he have to do with it after he had bought it and sold?
A. Had not been delivered or settled.
Q. Was that 5,000 that you sold to Seymour & Company delivered?
A. No.

Q. Was not delivered?
A. No; settled.
Q. Rung up, was it?
A. Yes, sir.
415 Q. Who rung it up—Mr. Foote or you?
A. We rung it up.
Q. Rung it up before or after Foote ordered you to sell it?
A. Of course we didn't ring it up till afterwards, because we had not a trade until he ordered it sold.
Q. Did you carry that 5,000 bushels of May wheat for the account of Foote?
A. We took it in for Foote.
Q. Charged him?
A. Now, when we took in wheat like that, delivered, say, to-day, and we had deals of the same option, they deliver up the wheat this morning, and we would take it and pay for it and deliver it right out to our parties and collect.
Q. Deliver it to some parties, the same parties you sold Foote's wheat to?
A. No.
Q. Did you in that case?
A. No.
Q. Tell me again what Mr. Foote had to do with that transaction after April 8th, 1875, after you sold out his contract.
A. He had two contracts, a contract to purchase 5,000 May wheat; he had a contract to sell off 5,000 May wheat. They were open till they were settled up or delivered.
Q. When that 5,000 May wheat was delivered to you from Young & Company did you hold it for the account of Foote?
A. Didn't hold it at all.
Q. Didn't hold it for the account of Foote?
A. It was Foote's wheat when it came in.
Q. Did you hold it then for his account?
416 A. We didn't hold it; we worked it up, right out again.
Q. When?
A. The same day.
Q. Who to?
A. I don't know whether this tells or not.
Q. How do you know you delivered it the same day?
A. If we had not we would have charged him with carrying expenses.
Q. What did you do with it? You say he had something to do with it after the parties delivered it to you.
A. It is very evident that we took it in and delivered it in to some other parties.
Q. Who to?
A. I can't tell.
Q. Delivered it out for the account of Ira Foote?
A. I presume we did.
Q. Who to?
A. I can't tell by this account.

Q. Don't you know that that trade between you and Young & Company of 5,000 that you bought for Foote you sold on the 8th of April to Seymour & Company, and that ended his connection with it?

A. I don't look at it in that light.

Q. What did you do with the wheat then?

A. His trades are both open until they are settled up; that is what I consider them. Both his trades are open till they are settled.

Q. You say Young & Company, after Foote had ordered the wheat sold out, made a delivery of the wheat that you bought for
417 him?

A. Yes.

Q. When did they deliver it?

A. I should think about May 3d, according to this.

Q. Did you pay for it?

A. Probably we did if it was delivered cash.

Q. Have you got some check to show you paid for it?

A. No, sir.

Q. Did Mr. Foote furnish any money to pay for it?

A. No, sir.

Q. Did he know you paid for it?

A. Don't know as he did or not.

Q. Did you ever have any talk with Mr. Foote about it?

A. Don't believe I did about that particular deal.

Q. If that wheat was delivered, what did you do with it; have you got it still?

A. We delivered it out.

Q. To whom?

A. I couldn't tell who to; this account don't show.

Q In what elevator was that wheat stored?

A. I have no recollection of that.

Q. Was it stored in any elevator?

A. Must have been.

Q. Do you know anything about it?

A. I know it was; we didn't receive grain of any kind that was not stored in elevators.

Q. You have not got that wheat now?

A. No.

Q. What did you do with it?

A. We delivered it.

Q. To whom?

418 A. I can't tell.

Q. Don't you keep an accurate account of receipts and deliveries of wheat?

A. No, sir.

Q. You don't know who you delivered it to?

A. Didn't know at the time. I haven't got a memory that takes me back 10 years—that gives me all these little things.

Q. Don't you know that when Mr. Foote ordered you to buy that wheat and you did buy it April 1st, 1875, and don't you know that

your books right before you show that you sold that April 8th—that same wheat—and that ended his connection with it, excepting to get his profits?

A. The books don't show that he was done with it. Till May 31st he was connected with it.

Q. Did he have anything to do with your having a statement of account of purchase and sale?

A. No.

Q. Why didn't you deliver that wheat to Seymour if you sold it to Seymour?

A. Settled up the Seymour deal.

Q. When?

A. On April 16th.

Q. Then you settled up the Seymour deal before May arrived, did you?

A. Yes, sir.

Q. Now, then, would you have settled up the Seymour deal for the account of Foote if Foote had not ordered you to do it?

A. I don't understand your question.

419 Q. Would you have made a settlement of the sale that you made to Seymour if Foote had had any connection with it at that time?

A. Of course we would; we always settled up all the trades that we possibly could, to get them off the books.

Q. Did Foote order you to settle up that deal with Seymour?

A. He did not.

Q. Didn't know anything about it, did he?

A. Didn't know anything about it.

Q. Mr. Lincoln, you bought 5,000 of Young for May delivery, and sold 5,000 to Seymour for May delivery. Why didn't you take this 5,000 and deliver it to Seymour?

A. As I said before, we always made it an object and endeavor to settle up all our trades just as fast as we could settle them up.

Q. Before maturity?

A. Yes, sir.

Q. At any time after you made the trades?

A. Any time; yes, sir. We paid no attention to whom the trades belonged, only we would settle anything that would settle.

Q. Rung them up?

A. Yes, sir.

Q. Get them off the books?

A. Our customers knew nothing about them, we took the responsibility of assuming that ourselves.

Q. Collected and paid the differences?

A. Yes, sir. When the time came for these we settled it up; some delivered cash; there was a great deal we delivered cash on—these that we had not been able to ring up.

420 Q. When this 5,000 wheat was delivered to you from Young & Company you didn't deliver it out then to somebody that you had sold to on account of Foote?

A. Not that I know of; must have been. I couldn't say as it was not because I can't trace that cash.

Q. You don't know who it went to?

A. No.

Q. You know you didn't deliver it to Seymour & Company, because you had rung up the deal on the 16th before?

A. Yes, sir.

Q. What did become of it you don't know?

A. It went to some other parties; there is no question about that.

Q. Some other parties other than Foote—Foote's trades?

A. It might have hit one of Foote's trades.

Q. Do you think it did if it did show it up?

A. I don't see it.

Q. You can't tell anything about what became of it, can you?

A. No; only it was delivered out to somebody.

Q. To somebody, but you don't know who?

A. No.

Q. You don't think it was delivered to any of Foote's trades, do you?

A. It might have been.

Q. Do you think it was?

A. There is one chance in a dozen that it was. He may have a considerable many trades.

Q. About one chance in 12?

A. Might have been. I don't know how many chances would be right.

Q. Did you on the same day, first day of April, 1875, buy 5,000 more bushels of William Young & Company for Foote for May delivery?

421 A. Yes, sir.

Q. Did you sell on the same day, the 8th of April, 5,000 for Foote, May delivery, to Davis & Myers?

A. Yes, sir.

Q. Was there any delivery in that?

A. No.

Q. Why didn't you receive the wheat from Young & Company?

A. Because we settled it before it came due.

Q. How did you settle it?

A. Rung it up.

Q. With whom?

A. Lyon, Lester & Company.

Q. What did Foote have to do with Lyon, Lester & Company?

A. He had nothing to do with Young & Company.

Q. When did you ring it up with Young & Company?

A. Foote had nothing to do with Young & Company.

Q. Didn't you buy of Young & Company for the account of Foote?

A. We did.

Q. Foote was done except to receive that wheat of Young & Company?

A. He was, except to receive it of them.

Q. Was it delivered to you?

A. No.

Q. You didn't expect to receive that wheat of Young & Company for the account of Foote?

A. We did until we could ring it up.

Q. When did you ring it up?

A. April 14th.

Q. Did Foote have anything to do about ringing it up?

A. That was rung up and settled with Lyon, Lester & Com-

422 pany before he sold out.

Q. On April 4th?

A. Yes, sir.

Q. He ordered it sold out before the maturity of the contract?

A. Yes, sir.

Q. Before he ordered it sold you rung that up?

A. Yes.

Q. So you had no wheat bought of Young & Company for Foote on April 8th?

A. No.

Q. On the 8th of April you sold for Ira Foote 5,000 bushels wheat for May delivery to Davis & Myers. What did you do with that—deliver it?

A. No; that was settled.

Q. How?

A. By ringing up.

Q. When did you ring it up?

A. The same day we sold it.

Q. So that, so far as this transaction is concerned, on the first of April on Mr. Foote's order you bought 5,000 bushels wheat of Young & Company for May delivery and on the 4th of April following you rung it up?

A. Yes, sir.

Q. So you didn't have any wheat bought of Young & Company?

A. Not of Young, but of some other parties.

Q. Who?

A. I don't know who.

Q. You know nothing about it?

A. No; I know we had a trade.

Q. Who was it for?

423 A. I couldn't tell you.

Q. How do you make sure of it?

A. As I said, we always had trades open on the book for any person when there is one settled.

Q. Show the trade you had open on the book after you settled with Young & Company.

A. I can't; I have no way of showing it.

Q. After you rung up these purchases of Young & Company you had an order to sell this wheat?

A. Yes; sell five May wheat.

Q. For May delivery?

A. Yes.

Q. You didn't deliver that wheat?
A. No.
Q. On the same day you sold it you rung it up with Davis & Myers, so you had no wheat sold?
A. Settled that up, but it left us open. I can't remember which was left open.
Q. You don't know what took the place of that sale to Davis & Myers?
A. No.
Q. On April 10th, 1875, did you buy for the account of Foote 5,000 bushels corn for May delivery of G. P. Comstock & Company?
A. Yes.
Q. Was it delivered to you?
A. No.
Q. What did you do with that?
A. Rung it up.
Q. Rung up before the month of May?
A. Yes.
Q. When?
424 A. April 29th.
Q. When did you have an order to sell that wheat?
A. April 29th.
Q. Same day you rung it up?
A. Yes.
Q. After you rung it up with Comstock you didn't have any bought?
A. It was bought of Comstock and sold to Comstock.
Q. On the 29th of April?
A. On the 29th. That was settled direct.
Q. There was no delivery either way?
A. No delivery. Settled direct, buying and selling of the same firm.
Q. All you did was to pay the difference to Comstock?
A. Yes.
Q. And charged that difference to Mr. Foote?
A. Yes.
Q. That is all there was of that transaction?
A. Yes.

By agreement of counsel the taking of further testimony in this case is adjourned to Saturday, December 19th, 1885, at 2 o'clock p. m.

425 DECEMBER 19TH, 1885.

Cross-examination of GEORGE D. LINCOLN resumed:

By the WITNESS: I would like to correct my testimony on one point. I think I was asked the question if all the trades were in this book from this date here in front, July 1st, 1874. At the time I testified that I thought it was. I didn't notice that these were all

provision trades in the front of the book; but we didn't commence in this book till November 16th, 1874, in the grain business, on page 82. That would show why I couldn't show where we bought that November and December wheat for Foote. It is back in the book previous to this, as we didn't commence in this till November 16th, 1874.

Q. Have you got that previous book?

A. No; I didn't find it. I don't know where it is. Probably it has been destroyed; at least, I don't know anything about it.

Q. You may state if all the trades you made for Mr. Foote after November 16th, 1874, are in the option book before you?

A. They would be, unless there were some trades—for instance, trades—something that was bought that was on the old book and was not sold out till after we commenced on this book that would be carried out in the old book. It might be after this date, but otherwise——

—. Then, if I understand you correctly, the 15,000 wheat for which you have charged Foote a difference of $400 on November 7th does not appear upon the option book now before you?

A. It does not.

Q. And is it equally true that the 15,000 December wheat
426 credited to Foote on the 3d day of December at $1,025 does not appear on the option book?

A. It does not appear on this option book at all.

Q. And you don't know where the option book is that shows those two transactions?

A. I do not. The one previous to this?

Q. You may turn to number 642 upon your option book, and I will ask you if, on the 14th day of April, 1875, you bought for Foote 5,000 bushels of corn, for what is known in the trade as seller May?

A. Yes.

Q. Of G. W. Adams & Company?

A. Yes.

Q. Did you sell that corn for Foote on April 29th, 1875, to G. P. Comstock & Company?

A. Yes.

Q. I will ask you if, on the 19th day of April, 1875, you bought 5,000 — wheat for Mr. Foote of A. Poole?

A. Yes.

Q. Was that wheat seller June?

A. Seller June.

Q. Did you sell that wheat to Adams on the 28th of May?

A. Yes.

Q. Did you charge up Foote with the difference—the loss to Foote the difference on that wheat?

A. We charged the loss to him, I presume.

Q. There was the loss on it?

A. Yes.

Q. Did you charge him that difference?

427 A. We charged him the loss.

Q. Did you charge him the difference between——
A. The loss would be the difference between the two prices.
Q. Then you did charge him the difference between the $1.04 and ⅜ cents a bushel and 92 and ¾ cents a bushel?
A. Yes; the loss would be that difference.
Q. That is what you charged him?
A. That is what we charged him.
Q. Did you, on the 19th of April, the same day, buy for Mr. Foote 5,000 June corn of Gilbert & Brega?
A. Yes.
Q. Did you sell that corn on the 20th of May back to Gilbert & Brega?
A. Yes.
Q. And there was a loss of about 6 cents a bushel on it, was there?
A. Yes.
Q. Did you charge the difference between the purchase price and the selling price to Foote?
A. We charged the loss to him, of course.
Q. And that was the difference between the prices I have named?
A. Between the two prices.
Q. Was there any delivery in that case?
A. No; that was settled direct by buying one contract of him and selling him another one.
Q. That is to say, you bought of Gilbert & Brega on the 19 of April, and on the 20th of May you sold it back to Gilbert & Brega, and that ended the transaction except the paying of the difference, didn't it?
A. Yes.

428 Q. On the 20th of April, Mr. Lincoln, did you buy 5,000 bushels of wheat, seller June, for Mr. Foote of McCormick, Adams & Company?

A. Yes.
Q. For $1.20⅜ a bushel?
A. Yes.
Q. Did you sell that wheat on the 29th of May to Robert Warren for 90¼ cents a bushel?
A. Yes.
Q. And you charged Mr. Foote the difference?
A. We charged him the loss.
Q. The loss was the difference, was it?
A. Between the two prices, what he bought it at and what he sold it at.
Q. Did McCormick, Adams & Company ever deliver you that wheat?
A. No.
Q. How was it disposed of?
A. It was rung up according to the custom of the board of trade, the way they always rung them up.
Q. Rung up by you; when was it rung up?
A. On May 21st.

Q. That was before the contract matured, was it?

A. Yes.

Q. Then after May 21st you did not have this 5,000 wheat bought of McCormick, Adams & Company?

A. No; not of McCormick, Adams & Company; of some other party.

Q. Who?

A. I couldn't tell you which, because I see here we delivered it cash to Robert Warren.

Q. That was after Foote had bought and sold it, both, wasn't it?

429 A. Yes.

Q. That is, you couldn't ring up the sale to Robert Warren?

A. No.

Q. But it was not delivered until after Foote had got out of it, was it?

A. I don't think that is really a fair interpretation of this part of——

Q. Didn't you render your account to Mr. Foote May 31st, 1875?

A. Yes.

Q. Is it not a fact that this wheat—Robert Warren wheat—that you sold was not delivered to you till June 1st?

A. Probably not.

Q. Isn't that the fact?

A. I should think so by the looks of it here. It says delivered June 1st, but we frequently make up accounts——

Q. Is not that the fact, that it was not delivered?

A. Yes.

Q. So far as Mr. Foote was concerned, isn't it true that you charged him up with that loss, that difference between the purchase price and the selling price, before there was any delivery to you?

A. There are a good many of your questions that I can't answer yes or no and give any idea what they mean.

Q. You can answer that question yes or no. (Question repeated.)

A. Yes; I will answer that yes; but in the next place I would explain that. We had paid out the money in settling up this purchase for Foote on May 21st. We settled it with another party and had this coming in from another source to meet this other.

430 Q. It is true, isn't it, that you bought this wheat for Foote April 20th, of McCormick, Adams & Company?

A. Yes.

Q. And that wheat was for June delivery?

A. Yes.

Q. It is true, isn't it, that on the 21st day of May you rung up that transaction with McCormick, Adams & Company—that purchase—so that you didn't have that wheat from McCormick, Adams & Company?

A. Yes; we didn't have that particular wheat.

Q. Isn't it true that Mr. Foote ordered that wheat sold before the month of June came around, to wit, on the 29th of May?

A. Yes.

Q. Isn't it true that you sold it to Robert Warren?

A. Yes.

Q. Isn't it true that on the 31st of May, before the wheat was to come from McCormick, Adams & Company, you rendered an account to Ira Foote showing a loss of the difference between $1.02⅝ a bushel and 90¼ cents a bushel, including your commission?

A. No doubt of it.

Q. No doubt whatever about it, is there?

A. No; not about that; that is a loss he had made on it.

Q. After the wheat was delivered to you June first by Robert Warren, what interest did Mr. Foote have in that wheat?

A. I don't know as he had any after we had rendered him the account of sale—charged him up with his losses.

Q. None whatever. You charged it, then, before the wheat was delivered—the whole of it—hadn't you?

431 A. We often do that.

Q. A common occurrence?

A. Yes, sir.

Q. Almost an invariable occurrence?

A. Not invariable, but a very common occurrence.

Q. Is it not nearly an universal occurrence?

A. I don't know how it is with other people. I don't think it was a universal, it was a common occurrence.

Q. Now, then, on the 28th of April, 1875, did you buy for Foote 5,000 bushels corn, seller June, of D. W. Irwin & Company?

A. Yes.

Q. Did you on the 20th of May sell that corn to R. A. Peters?

A. Yes.

Q. And did you on the 31st of May render an account to Ira Foote charging him the difference between 76½ cents a bushel and 69 cents a bushel?

A. Yes; we charged him up with his loss on May 31st.

Q. Did you charge up the difference between 76½ and 69 cents a bushel?

A. The loss would be the difference between what he bought it at and what he sold it at.

Q. Isn't it true that in your account rendered Mr. Foote he bought—and which is an exhibit in this case—where you have charged a loss you have charged it difference?

A. Yes.

Q. And where you have credited a profit you have credited it a difference?

A. Yes; that is customary.

Q. Is it not true in this case that that is the language you used?

432 A. Yes.

Q. I will ask you again, the transaction I have just inquired of, if you did not charge Mr. Foote the difference between 76½ cents and 69 cents.

A. Yes, sir; that would be his loss on it.

Q. Now, in this transaction, you bought that wheat on the 28th

of April of D. W. Irwin & Company. Did Irwin & Company deliver that wheat?

A. No.

Q. What did you do with it; that wheat was deliverable in June, what did you do about that?

A. Rung it up May 19th.

Q. Of what year?

A. That year.

Q. Before the time of delivery arrived?

A. Yes.

Q. Did you, on the 29th day of April, 1875, buy for Mr. Foote 5,000 bushels corn, for June delivery, of G. P. Comstock & Company?

A. Yes.

Q. Did you, on the 20th of May and before June arrived, sell that corn to Murray, Nelson & Company?

A. Yes.

Q. And did you, before June arrived, to wit, on May 31st of that year, render an account to Mr. Foote, in which you charged him the difference between 77½ cents a bushel and 69 cents a bushel?

A. Yes.

Q. Did you, on the 29th of April, 1875, buy for Mr. Foote 5,000 bushels of corn, seller June, of G. P. Comstock & Company at 77½ cents a bushel?

A. Yes.

433 Q. Did you also, on the 20th of May, the same year, sell that corn to Murray, Nelson & Company for 69 cents a bushel?

A. Yes.

Q. And did Comstock & Company ever deliver you that corn?

A. No.

Q. What became of that contract you had with Comstock for the corn?

A. Rung up May 19th.

Q. Did you, on the 31st of May and before June arrived, render an account to Mr. Foote, charging him with the difference between 77½ cents a bushel and 69 cents a bushel?

A. Yes.

Q. Did you, on the 3d of May, 1875, buy for Foote 5,000 bushels wheat, seller June, of Norton, Son & Company?

A. Yes.

Q. And did you sell that wheat on the 29th of May to R. P. Murphy & Company?

A. Yes.

Q. And did you charge Mr. Foote the difference between $1.07¼, the purchase price, and 90¼ cents a bushel, the selling price?

A. Yes.

Q. Did you receive that corn from Norton, Son & Company?

A. No.

Q. What became of it?

A. It was rung up May 22d.

Q. You rung that up with Norton, Son & Company, and did you likewise ring up the sale you made to Murray, Nelson & Company?

A. Yes.

Q. On the 31st of May?

A. On the 31st of May.

434 Q. So that the purchase and the sale was rung up before June arrived?

A. Yes.

Q. When I use the expression seller June you understand me to mean the contract was for the seller to deliver it at his option during the month of June.

A. That is what the words mean.

Q. On the board of trade?

A. Yes.

Q. Did you, in July, 1875, buy 5,000 bushels wheat for Mr. Foote of Davis & Myers for September delivery?

A. Yes.

Q. And did you sell that wheat *in* September 1st to Gilbert & Brega?

A. Yes.

Q. And you can't tell, can you, what day of July you bought it?

A. No; the date is missing.

Q. State whether Davis & Myers delivered you that wheat or what you did do with it.

A. It was settled—that date is missing, too—it was settled in July.

Q. You mean by settled rung up, don't you?

A. Rung up.

Q. Is it also true that the sale to Gilbert & Brega was rung up or settled on the same day you made it—September 1st?

A. September 1st.

Q. No delivery, was there, by Gilbert & Brega?

A. No; I should think not, by the memoranda here.

435 Q. Did you charge Mr. Foote the difference between the purchase price, namely, 76⅜ cents a bushel, and the selling price, 63 cents a bushel?

A. Yes.

Q. Did you, on the 28th day of August, 1875, sell for Mr. Foote to W. E. Templeton 5,000 bushels corn for October delivery at 65¾ cents a bushel?

A. Yes.

Q. Did you, on the 6th of September, and before October arrived, buy in that corn of W. H. Underwood at 60½ cents a bushel?

A. Yes.

Q. Did you deliver that corn of W. E. Templeton?

A. No.

Q. What did you do?

A. Settled with him August 8th.

Q. How? Rung it up?

A. Yes.

Q. For delivery and likewise the purchase of Underwood. Did you settle that on September 7th?

A. Settled September 7th.

Q. Next day after you bought it?

A. Yes.

Q. And did you credit Mr. Foote in that transaction the difference between 65⅞ cents a bushel, the selling price, and 60½ cents a bushel, the purchase price?

A. Yes. That would be his profits.

Q. And that was what you credited him?

A. Yes.

Q. Did Mr. Foote have any corn to deliver Mr. Templeton at that time?

436 A. I don't know whether he did or not.

Q. To your knowledge, he did not, did he?

A. Not to my knowledge.

Q. Nor recollection?

A. No.

Q. Did you on the 28th of August sell short for Mr. Foote to J. S. Perrionett 5,000 bushels October corn for 65⅞ cents a bushel?

A. Yes.

Q. Did you on the 6th of September buy in that corn of the same party, Perrionett & Company, at 60½ cents a bushel?

A. Yes.

Q. Did you or Mr. Foote deliver that corn to Perrionett that you sold?

A. No; that was a direct settlement, bought and sold from the same firm.

Q. There was no delivery either way?

A. No delivery either way.

Q. And it was settled on the 8th of September, was it? Are you not mistaken about that? Didn't you ring it up with Perrionett, the short sale to him, on the first day of September?

A. Come to look at this memorandum here, the stub, I see this of Perrionett was settled up on the 1st day of September—rung up with some other sales.

Q. You didn't buy in this corn—buy it back again—till the 6th of September, did you?

A. No.

Q. Then you rung that up on the same day—6th of September?

A. Yes; with some other deals.

Q. Some other transactions?

437 A. Yes.

Q. So it was not a direct settlement?

A. No.

Q. Both the sale and purchase were rung up separately?

A. Yes; might have been direct. I haven't looked back to compare to see who they were rung up with.

Q. Couldn't have been a direct settlement as between those parties if the sale was disposed of on the first of September and the purchase was not made till the 6th?

A. No; not on these two trades, but still we might have settled

one of these with Perrionett we had sold to him with one bought for some other party.

Q. That was all closed out before October arrived, wasn't it?

A. Yes.

Q. Mr. Foote was credited with the difference before that time?

A. Yes.

Q. Did you on the 31st of August sell for Mr. Foote 5,000 October corn to B. P. Hutchinson at 63 cents?

A. Yes.

Q. Did you deliver that corn to Mr. Hutchinson?

A. No.

Q. Did you ring it up on the 7th day of September with Hutchinson?

A. I think it is the 7th.

Q. Is that true, Mr. Lincoln?

A. I think it is the 7th.

Q. And did you on the 6th of September buy in that corn of Bensleys & Wagner?

A. Yes.

Q. And did you ring that up on the 7th day of September?

A. Yes.

438 Q. With Bensleys & Wagner?

A. Rung it up with Benslys & Wagner and Hutchinson.

Q. So there was no delivery either in the purchase or sale, was there?

A. No.

Q. And Mr. Foote made a profit of the difference between 63 cents and 60⅛ cents a bushel, did he?

A. Yes.

Q. And it went to his credit?

A. On September 8th.

Q. And all of that was closed out before October arrived, wasn't it?

A. Yes.

Q. Did you, on the 9th day of September, sell short for Mr. Foote to G. C. Beebe & Company 5,000 bushels October corn at 56⅞ cents a bushel?

A. Yes.

Q. Did you on the next day, September 10th, buy in that October corn of Underwood & Sons for 58⅛ cents a bushel?

A. Yes.

Q. Did you deliver that corn that you sold to Beebe & Company for Foote, or did anybody?

A. No.

Q. Did you ring it up on the 11th day of September?

A. Yes.

Q. Did Underwood & Company deliver you that corn that you bought on the 10th?

A. No; that was not delivered.

Q. Rung up on the 15th of September?

A. Yes.

439 Q. No delivery either way, purchase or sale?
A. No.
Q. On September 20th you rendered an account of those transactions to Mr. Foote, charging him with the difference between 56¾ cents and 58⅛ cents as loss, didn't you?
A. Yes.
Q. And that ended the transaction?
A. Yes.
Q. Did you, on September 9th, sell to Murray, Nelson & Company for Mr. Foote 5,000 — October corn at 56⅞ cents a bushel?
A. Yes.
Q. And did you, on the 20th day of September, ring that corn up with Murray, Nelson & Company?
A. Yes.
Q. There was no delivery, was there?
A. No delivery.
Q. And did you, on the 10th of September, buy that corn for Mr. Foote, of Bensleys & Wagner, at 58½ cents?
A. Yes.
Q. And did you ring it up with Bensleys & Wagner the next day, September 11th?
A. Yes.
Q. There was no delivery either in the purchase or the sale?
A. No.
Q. And on the 20th of September you rendered an account to Mr. Foote, charging him up the difference between 56⅞ and 58½ cents as loss in that transaction?
A. Yes.
Q. It was all closed up before October arrived?
440 A. Yes.
Q. Did you, on the 10th day of September, buy of R. P. Murphy 5,000 — corn for Foote?
A. Yes.
Q. At 58⅜ cents a bushel?
A. Yes.
Q. And did you ring that up with R. P. Murphy & Company on the 15th day of September?
A. Yes.
Q. So that after you rung it up you didn't have that corn purchased of R. P. Murphy, did you?
A. No.
Q. And did you, on the 29th of October, sell that corn to George Webster at 52¾ cents?
A. Yes.
Q. Did you charge Mr. Foote with the difference between 52 and ¾ cents and 58⅜ cents a bushel?
A. Yes, sir. That was delivered to George Webster.
Q. Delivered to him? What did you do after delivery?
A. Got it transferred. Don't say what day.
Q. October 29th, did you turn it over to Foote?
A. No.

Q. What did you do with it?
A. I delivered it to George Webster on Foote's account.
Q. How could you deliver it to him if you rung up with Murphy the 15th of September?
A. Delivered by some other trade.
Q. You mean some corn was delivered?
A. Yes, sir.
Q. Some corn. But you charged Foote, didn't you, the
441 difference between the selling price, 52¾ and 58⅜ cents?
A. Of course.
Q. That is just what you did. And is it true that on September 10th you bought of J. S. Perrionett 5,000 bushels corn, for October delivery, at 59⅜ cents a bushel?
A. Yes.
Q. And you rung it up on the next day, September 11th?
A. Yes.
Q. So you had no corn bought of Perrionett after the next day, September 11th?
A. No.
Q. And it is true, isn't it, that on the 29th of October you sold this corn to Wilkins, Whitney & Dutch?
A. Yes.
Q. And charged Foote the difference between 59⅜, then amount you agreed to pay Perrionett for it, and what you sold the corn at, 53 cents a bushel?
A. Yes; that was delivered cash.
Q. Who delivered it?
A. We delivered it to Wilkins, Whitney & Dutch on Foote's account.
Q. How did Foote get corn to deliver?
A. I don't know where it came from.
Q. Was it Foote's corn when you delivered it?
A. It was when we delivered it.
Q. Where did he get it?
A. I don't know.
Q. Is it not true that you had rung up that purchase of Perrionett on the 11th of September?
A. Yes.
Q. Then you had no corn then bought of Perrionett for Foote?
442 A. No.
Q. Isn't it true that if you delivered any corn to Wilkins, Whitney & Dutch that it was S. G. Hooker's corn and not Foote's?
A. It might have been—no, it was not our corn, because it came from some of our parties that we bought of.
Q. If you will, state then how it became Mr. Foote's corn. You may state where the money came from to buy or pay for it and all about it.
A. We were acting as his agents.
Q. As his commission merchants, were you not?
A. Yes; he knew nothing about how we bought it; didn't make

any difference to him whether of Perrionett, the Murphys or Bensleys.

Q. Where did you get that corn?

A. This don't show.

Q. Do you know?

A. No.

Q. Do you know anything about it?

A. Yes.

Q. Do you mean to say that any 5,000 bushels was set aside for Mr. Foote as being his identical corn?

A. I don't know as I could say that.

Q. Would you say, Mr. Lincoln, that such things never happen or very seldom happen in the trade?

A. No; I think they do happen sometimes, some days, but I don't think that did then.

Q. As a matter of fact, that didn't happen then. Isn't this a fact that on the 29th of October S. G. Hooker & Company had some corn that had been delivered to them by somebody, you
443 don't know who?

A. No.

Q. Do you know where it came from, where you bought it?

A. No.

Q. And isn't it true that this corn belonged to S. G. Hooker & Company—they had paid for it out of their own money, isn't that the way?

A. Paid for out of our money.

Q. Instead of ringing up this trade with Wilkins, Whitney & Dutch they delivered 5,000 bushels corn?

A. Yes.

Q. Isn't that the fact?

A. I think that would be about the statement of it.

Q. Isn't it right?

A. I think it is just about right.

Q. Isn't it true that, so far as Mr. Foote was concerned, he didn't know anything about that delivery?

A. I presume not.

Q. And he never would know of it?

A. He didn't know who we bought of or who we sold to; he held us responsible. A man always holds his commission man responsible.

Q. It is true, then, so far as Foote was concerned, he was charged a difference between the selling price, 53 cents, and the purchase price, 59⅜ cents, including commission?

A. Yes.

Q. Isn't it true that on the 16th of September you bought of Moses Jones 5,000 — corn for Foote, October delivery?

A. Yes.

444 Q. And that you rung it up on the 8th day of October?

A. Yes.

Q. And that Moses Jones didn't deliver you that corn?

A. No.

Q. Rung up with him?

A. Yes.

Q. And isn't it equally true that on the 16th of September, the same day, you bought 5,000 bushels of A. Eichold for Foote for October delivery?

A. Yes.

Q. Is it true that on the 8th of October you bought for Foote of D. J. Lake 5,000 — corn for November delivery?

A. Yes.

Q. And it is true, isn't it, that on the 11th of October you bought of Culver & Company 5,000 — more November corn for Foote?

A. Yes.

Q. And it is true, isn't it, that on the 11th of October you bought 5,000 — more corn for Foote for November delivery of W. T. Templeton?

A. Yes.

Q. Isn't it true that on the 13th of October you bought 5,000 — wheat, seller November, of Charles Wetherell for Foote?

A. Yes.

Q. What is the meaning in that transaction of "acc. H."?

A. That was bought by Hooker's order for the account of Hooker, and put down to Ira Foote. Hooker was to have the profits out of it if he made anything, and Foote was to stand the losses, if I remember it.

Q. You remember something of that transaction, do you?

A. I remember something of that transaction.

445 Q. That was rung up, then, with Wetherell on October 30th, and that sale was made to William Young & Company?

A. Yes.

Q. There were no deliveries either way, were there?

A. Not in that trade.

Q. That was rung up on October 30th, was it?

A. Yes.

Q. Did you, on the 13th of October, buy of W. S. Crosby 5,000 — wheat for Ira Foote for the account of Hooker?

A. Yes.

Q. What does that mean?

A. It means that Hooker was to have the profits and Foote stand the losses.

Q. And that was about $1.07⅞ a bushel?

A. Yes.

Q. And that was rung up on the 18th of October, was it?

A. Yes.

Q. So that when November came there was no contract with Crosby for wheat, was there?

A. No; not for that 5,000 —.

Q. On the 12th of October did you sell that wheat to C. A. Mair & Company for $1.09 a bushel?

A. Yes.

Q. And that was for the account of Hooker, was it?

A. Yes.

Q. Was there a profit in that transaction?
A. Yes.
Q. Who got that profit?
A. Hooker.
446 Q. You didn't credit that to Foote?
A. No.
Q. The difference, then, between the purchase price, $1.07 and ⅝ cents, and $1.09 was credited up to S. G. Hooker?
A. He got the money.
Q. Is it true it was credited up?
A. I don't recollect exactly how it was put on the book; might have been credited to Foote on the book and then the money given to Hooker and charged to Foote afterwards.
Q. Did you, on the 21st day of October, buy 5,000 — November wheat of W. E. McHenry & Company, account of Hooker?
A. No; that is account of Mrs. Hooker.
Q. And you rung that transaction up on the same day, didn't you, that you bought it?
A. No; bought the 21st and rung up the 25th.
Q. And that wheat was sold to Bensley & Wagner on the 18th of October at $1.10 a bushel?
A. Yes.
Q. And the transaction was all closed up before November arrived, wasn't it?
A. The sale was not settled up till November, either 10th or 20th.
Q. How did you render an account of purchase and sale in that transaction?
A. I don't recollect. I would have to look over the other books to find out that. The proceeds went to Mrs. Hooker.
Q. There was no delivery either way?
A. No.
Q. Who got those proceeds?
A. Mrs. Hooker.
447 Q. Foote didn't get those?
A. No. I would say, in that case it was charged up to Foote's account and afterwards paid Hooker back and charged to him.
Q. Did you buy for Foote, on the 8th of March, 1876, 5,000 bushels corn, May corn?
A. Yes.
Q. And did you sell that April 27th to W. T. Baker & Company?
A. Yes.
Q. Rung up that purchase on April 26th with Kingman & Company?
A. Yes.
Q. Did you ring up the sale April 29th with W. T. Baker?
A. Yes.
Q. And charged up the difference between 47⅜ and 46 cents per bushel, being the loss thereon, to Foote?
A. Yes.

Q. Did you, on the 9th of March, 1876, buy 5,000 — May corn of Spruance, Preston & Company?
A. Yes.
Q. Did you ring that up the first of May?
A. No, sir; that was delivered cash on May 1st.
Q. Delivered to you?
A. Yes, sir.
Q. And when you got it, did you turn it over to Foote?
A. No; we delivered it to W. T. Baker & Company.
Q. You kept it, did you?
A. It was delivered May 1st and we delivered it out May 1st to Baker & Company.
Q. Did Mr. Foote know anything about that?
A. I presume not.
448 Q. Did you charge him the difference between 46 cents, the price of corn on April 27th, and 47¼ cents, on March 29th?
A. Yes, sir.
Q. Did you, on the 10th of March, buy for Foote 5,000 bushels of May corn of W. T. Templeton?
A. Yes, sir.
Q. Who bought that?
A. Hooker.
Q. Did you ring that up on March 24th?
A. Yes, sir.
Q. Did you, on the 21st of March, buy 5,000 bushels wheat for Foote, of H. J. Slater, for May delivery?
A. Yes.
Q. And rung it up March 28th?
A. Yes.
Q. Did you, on the 21st of March, buy 5,000 — May wheat for Foote of John Dupee?
A. Yes.
Q. Did you ring it up on March 21st, the very day you bought it?
A. Yes.
Q. And did you sell that May wheat for Foote on the day before you bought it, March 20th?
A. Yes.
Q. And did you ring that sale up on March 28th—sale to David Powers?
A. Yes.
Q. Did you on the same day, March 21st, buy 5,000 — May wheat for Foote of John Dupee?
A. Yes.
Q. Did you, the day before that, on March 20th, sell that
449 wheat to David Powers?
A. Yes.
Q. Did you ring up the sale of this May wheat to David Powers on April 15th?
A. Yes.
Q. Did you ring up the purchase on March 21st the same day you bought it?

A. Yes, sir.

Q. Then, in that case, he sold this May wheat on March 20th and bought it in next day, March 21st?

A. Yes, sir.

Q. Then the loss on that wheat, being about ½ a cent a bushel, you charged up to Foote, did you?

A. Yes, sir.

Q. You bought, on March 23d, for Foote, 5,000 — corn of William Young & Company, May corn?

A. Yes.

Q. And did Mr. Foote know of any delivery of that corn?

A. I don't know whether he did or not.

Q. In the course of business, did he?

A. He might and might not; I think — very doubtful whether we said anything to him about it.

Q. You might not?

A. No; that was delivered to us.

Q. He ordered that same corn sold before May, didn't he?

A. Yes.

Q. When?

A. April 27th.

Q. And you charged him in that transaction the loss, didn't you, being the difference between 49⅛ and 45⅞ cents per bushel?

450 A. Yes.

Q. And this identical corn that you bought of Young & Company was not delivered to W. T. Baker, was it?

A. No.

Q. Some other corn?

A. Delivered to some other parties.

Q. Some other corn, wasn't it?

A. Yes.

Q. Did you buy for Foote, on the 24th of March, 5,000 bushels May corn of Wilkins, Whitney & Dutch?

A. Yes.

Q. At 49½ cents a bushel?

A. Yes.

Q. Did you ring up that sale on March 29th with Wilkins, Whitney & Dutch?

A. Yes.

Q. No delivery?

A. No.

Q. Did you sell that corn on the 27th of April for Foote, at 45½ cents a bushel, to McDermid & McOrtell, and did you ring up that sale on April 28th, the next day after you made it?

A. Yes.

Q. And you charged the loss, being the difference between 45½ cents, the sale, and 49½ cents, the purchase, to Foote?

A. Yes.

Q. Did you, on the 24th of March, 1876, buy 5,000 bushels corn, seller May, for Foote, of Wilkins, Whitney & Dutch?

A. Yes.

Q. Did you ring it up on the 10th day of April?
A. Yes.
451 Q. Who bought that corn on the board?
A. Hooker.
Q. Who bought the lot just previous to that?
A. Hooker.
Q. Did you, on the 27th of March, buy for Foote, 5,000 — corn, seller May, of Morse, Wood and Co.?
A. Yes.
Q. And did you ring it up the 28th of April?
A. Yes.
Q. Did you, on the 26th of April, buy 5,000 bushels corn of Spear & Driver for Foote?
A. Yes.
Q. Was that June corn?
A. Yes.
Q. Rung it up the 29th of May?
A. Yes.
Q. Did you sell that corn on the 29th of May to J. S. Perrionett & Company?
A. Yes, we sold it.
Q. You didn't ring it up?
A. No.
Q. What did you do?
A. Settled it.
Q. How did you settle it?
A. Settled by paying losses.
Q. Settled with Perrionett?
A. Yes.
Q. There was no ring to it?
A. No.
Q. When did you settle it?
452 A. After we suspended business.
Q. Then when you suspended business that was not——
A. That was open.
Q. An open trade?
A. Yes.
Q. No delivery on either side?
A. No.
Q. And you charged up Foote the difference between 43¼ cents and 46⅜ cents?
A. We did.
Q. Did you on the same day, the 26th of April, buy of B. Adams & Company 5,000 — June corn for Mr. Foote?
A. Yes.
Q. Rung it up the 24th of May?
A. Yes.
Q. Did you, on the 29th of May, sell that corn to B. H. Lincoln?
A. Yes.
Q. And you suspended before you settled with Mr. Lincoln?
A. Yes.

Q. No delivery either way?
A. No.
Q. Did you, on the 27th of April, buy 5,000 — June corn for Foote of W. T. Templeton?
A. Yes.
Q. And you rung it up on the first day of May, did you?
A. Yes.
Q. And did you on the 29th of May sell that corn to G. C. Tichnor?
A. Yes.
Q. And you charged Foote in that transaction, did you, the difference between 43¼ and 45⅞ cents per bushel?
453 A. Yes.
Q. There was no delivery either way, was there?
A. No.
Q. Did you, on the 27th of April, buy of Lincoln, for Foote, 5,000 — June corn at 45⅞ cents?
A. Yes.
Q. And you settled it with Mr. Lincoln?
A. Yes, sir.
Q. There was no delivery?
A. No.
Q. Did you, on the 29th of May, sell that corn to H. C. Munch for 43⅜ cents?
A. Yes.
Q. And settled with him? No deliveries either way?
A. No.
Q. And on the same day, the 27th of April, did you buy of George C. Tichnor 5,000 bushels of corn for Foote at 45⅞ cents, and on the 29th of May did you sell that corn to H. C. Munch at 43⅜ cents?
A. Yes.
Q. And there were no deliveries either way?
A. No.
Q. Both purchase and sale were settled off, were they?
A. Settled.
Q. Did you, on the 27th of April, buy of M. C. Baker 5,000 bushels June corn for Foote at 45¾ cents?
A. Yes.
Q. Rung up the 20th of May?
A. Yes.
Q. No deliveries?
454 A. No.
Q. Did you sell that corn to Field, Dinsmore & Company on the 29th of May?
A. Yes.
Q. And settled with him?
A. Settled.
Q. No deliveries either way?
A. No.

Q. You simply charged up Foote the difference between 43¼ and 45⅜ cents a bushel?
A. Yes.
Q. On the 27th of April did you buy for Foote 5,000 — June corn of H. C. Munch?
A. Yes.
Q. And you settled with them?
A. Yes.
Q. No delivery and no ringing up?
A. No ringing up.
Q. And you sold that the 29th of May to the same parties for 43¼ and settled that, did you?
A. Settled it.
Q. Did you, on the 27th of April, buy 5,000 — more June corn for Foote of H. C. Munch?
A. Yes.
Q. You settled that, did you? There was no delivery?
A. No delivery.
Q. On the 29th of May you sold to W. M. Brainard?
A. Yes.
Q. No delivery?
A. No delivery.
455 Q. You charged the difference between 43¼ and 45⅜ cents a bushel to Foote, did you?
A. Yes.
Q. Did you, on the 28th of April, buy of Field, Dinsmore & Company 5,000 — more June corn for Foote at 45¼ cents?
A. Yes.
Q. And settled it?
A. Yes.
Q. No ring or no delivery?
A. No.
Q. On the 29th of May you sold that to George Wells at 43¼?
A. Yes.
Q. And settled that?
A. Yes.
Q. No delivery and no ringing up?
A. No.
Q. But you charged Foote with the difference between 43 and a quarter and 45 and a quarter?
A. Yes.
Q. On the 28th of April did you buy of Field, Dinsmore & Company 5,000 — more June corn at 45¼ cents?
A. Yes.
Q. And did you settle that directly with Field, Dinsmore & Company?
A. I don't know how it was settled.
Q. It was not delivered or rung up?
A. No; these were all trades that were open when we suspended, and were settled without regard to ringing or anything else.
Q. On the 29th of May you sold it to J. C. Myer & Company?

A. Yes.

Q. Settled that direct?

456 A. Yes.

Q. You didn't deliver or ring up, either?

A. No.

Q. Did you, on the 31st of March, 1876, buy for Foote 250 tierces lard for seller May?

A. Yes.

Q. Who bought that lard on the floor?

A. Hooker.

Q. And did you ring that up on April 20th of that same year?

A. Yes, sir.

Q. And you paid 14 cents a pound for that?

A. Yes.

Q. And on April 25th, 1876, you sold that to A. Geddes, did you?

A. Yes, sir.

Q. And you rung that up on April 25th, didn't you?

A. Yes.

Q. No delivery either way?

A. No.

Q. And on April 25th, 1876, did you buy for Foote 250 tierces lard, seller June, of A. Geddes for Foote?

A. Yes.

Q. And rung it up April 27th with A. Geddes—that is, the man you sold it to?

A. Yes.

Q. And on May 2nd you sold that lard to J. K. Fisher & Company?

A. Yes.

Q. And rung it up May 4th?

A. Yes.

Q. And there was no delivery either way?

A. No.

457 Q. You charged Foote the difference between 12.27½ per 100 pounds and 13.42½ per 100 pounds?

A. Yes.

Q. I wish you would examine the paper I now hand you, marked Complainant Rice's Exhibit of Entries on the Option Book of S. G. Hooker & Company, and at a convenient time hereafter state whether or not it is a correct copy of all the entries appearing upon said option book of S. G. Hooker & Company from which you have been testifying.

A. Yes, sir.

Q. In what business was Mr. Foote engaged, Mr. Lincoln?

A. I don't know as he was engaged in any business when he was hanging around the office there.

Q. What business had he been engaged in prior thereto?

A. I don't know anything, only what I heard him say; he had been a builder.

Q. Contractor and builder?

A. Yes, sir.

Q. Did you ever know Mr. Foote to be engaged in any business except that of contractor and builder?

A. Never knew him to be engaged in that.

Q. From hearsay or otherwise?

A. Hearsay; that is all; no regular business.

Q. He never was in the grain business, to your knowledge, excepting by speculating through you or other houses, was he?

By Mr. JACKSON: I object to the form of the question and the use of the word speculating.

Q. Did you ever see Mr. Foote on the board of trade in the city of Chicago?

458 A. I don't know as I ever did.

Q. Did you ever know of his having a bushel of grain—actual grain—in your life?

A. I don't know anything about him at all.

Q. Did you ever know of his having any grain?

A. No; I never did know him to have any grain.

Q. Of his having any pork?

A. I never did.

Q. Or any lard?

A. I didn't know him at all.

Q. You didn't know him at all?

A. Until he came to the office.

Q. Did you ever know of his being in the grain business in any form or in the provision business?

A. Not to my knowledge.

Q. You knew, didn't you, during the time he was trading with your house that he had been and was a carpenter and builder by profession?

A. I was told so.

Q. Have you any recollection about his giving you any orders?

A. He used to come in the office to give orders to whoever happened to be there to buy or sell grain or provision.

Q. Can you name any orders that he ever gave?

A. No.

Q. You don't remember any. Did he ever deliver to you any grain or provision of any kind to be sold?

A. No.

Q. Did he ever receive any from you?

A. No.

459 Q. Did Mr. Foote ever deliver you any grain or provision?

A. Not personally.

Q. Did he ever receive any grain or provision from you?

A. Not personally; but we delivered grain on his contracts that we had with him, and received grain on his contracts.

Q. Did you notify him of it?

A. I don't recollect whether we did or not.

Q. Have you any recollection of his ever having any notice whatever of any grain delivered to you or delivered by you on his account?

A. Yes; I recollect we had a large quantity of corn delivered to us on his account that we carried for him at his request.
Q. What did he say to you about it?
A. That is, through Hooker's request. Hooker said that Foote wanted it done.
Q. Hooker said so?
A. Yes.
Q. You don't remember Mr. Foote's saying anything about it?
A. Not to me.
Q. You didn't hear him?
A. No.
Q. All you know is what Hooker told you?
A. Hooker told me Foote wanted we should carry over for him, and we took it in and carried it a month.

By agreement of counsel the taking of further testimony in this case is adjourned to Monday, December 21st, 1885, at 3 o'clock p. m.

460 DECEMBER 21ST, 1885.

By Mr. LINCOLN: In answer to the question whether I would compare this transcript with the option book, I will say it corresponds with the book, with the exception of the carrying out of the right of each page; but in going over this I find that Mr. Bisbee has overlooked some of these in asking me about them. Where they are marked cash on the margin, it means that the property was taken in and paid for and delivered out again as cash grain.

APRIL 3D, 1886.

Counsel present as before; also Francis A. Riddle.

By Mr. JACKSON: In behalf of the Third National bank, I move to strike out all testimony taken under the cross-bill of Rice, for the reason that, under the decree filed by the Third National bank to the said cross-bill, I contend that the only testimony proper to take is with reference to the truth of the plea; and, if the truth of the plea is established, that all evidence tending to reopen the case is immaterial, irrelevant, and improper.

Mr. John H. Thompson makes a similar motion on behalf of J. Irving Pearce.

By the MASTER: J. Irving Pearce, assignee of S. G. Hooker & Company, having filed an answer to the cross-bill of Rice, denying the allegations thereof, and one of the issues in said cross-bill and answer being the alleged illegality of the transaction between Ira Foote and S. G. Hooker & Company, it is the opinion of the master that the testimony is competent and material, at least as be-
461 tween Rice, complainant in the cross-bill, and Pearce, defendant therein, who can have no better position than S. G. Hooker & Company, whose assignee he is; so that, whatever the court on hearing may decide as to the question of the materiality and competency of the evidence touching the nature of the transaction between Ira Foote and S. G. Hooker & Company as to the plea and answer in support thereof filed by the Third National

bank, the evidence ought to be permitted as to the issues raised between Rice, complainant in the cross-bill, and Pearce, defendant therein. It does not follow, even if the court shall hold that as between Foote and the Third National bank the judgment at law is *res adjudicata*, that the judgment would be *res adjudicata* as between Rice and Pearce.

To which ruling of the master Mr. Jackson except- on behalf of the Third National bank, and Mr. Thompson excepts on behalf of J. Irving Pearce.

Cross-examination of GEORGE D. LINCOLN continued by Mr. BISBEE:

By Mr. BISBEE: Counsel for James H. Rice in the cross-bill withdraws the exhibit marked "Complainant Rice's Exhibit of Entries on the Option Book of S. G. Hooker & Company," offered at the last sitting, and identified by the witness Lincoln as a substantial copy of the Foote trades in the option book, for the reason that a new copy has been prepared, about which the witness will be now interrogated.

Q. Since your last examination, Mr. Lincoln, have you been handed what purports to be a copy of the trades made by S. G. Hooker & Company for the account of Ira Foote, as appears
462 in the option book of S. G. Hooker & Company?

A. Yes, sir.

Q. Have you, at the request of counsel, compared the statement thus handed you with the option book?

A. Yes, sir.

Q. You may state whether or not such copy is a correct copy of the option book so far as it relates to those trades.

A. Yes, sir; it is a copy of the actual trades of Foote on the book.

Solicitors for the Third National bank and for J. Irving Pearce do not object to this because it is a copy instead of the original, but they do object because the original, if offered, would be immaterial, incompetent, irrelevant, and improper—that is, defendants admit that this copy is a true copy of certain entries in the so-called option book of S. G. Hooker & Company, but do not admit that it is a complete record of all such transactions, but only that it is a correct copy of certain entries as they appear in the original book, and admit nothing further.

By Mr. BISBEE: Counsel for complainant Rice in the cross-bill offers said statement in evidence and the same is marked "Complainant's Exhibit O, copy of entries in option book."

By Mr. RIDDLE: We object to its being offered as evidence in the case for the reason above named.

Q. Mr. Lincoln, did S. G. Hooker & Company, between the 1st day of October, 1874, and the 1st day of June, 1876, receive any orders or make any trades on the Chicago Board of Trade for Ira Foote that are not contained in Exhibit O?

A. Not to my knowledge.

Q. And if they had made any trades you would have had
463 knowledge of them, would you?

A. Probably; I think I would.

Q. You think so, don't you?

A. Yes, sir.

Q. Then does Exhibit O contain all the entries in the option book of Hooker & Company concerning trades made for Ira Foote on the board of trade?

A. Yes, sir.

Q. Now examine pages 1 and 2 of Exhibit O and state if those two pages appear upon the option book produced by you.

A. They do not.

Q. Then, as a matter of fact, it is true, is it, that the exact copy from the option book commences on page 3 of Exhibit O?

A. Yes, sir.

Q. And the trades that appear on pages 1 and 2 appear upon the books of S. G. Hooker & Company known as the journal and ledger and cash book, do they not, but no option book is in existance to show these trades; that is the fact?

A. No option book; that is the fact.

Q. That is, it is lost?

A. It is lost; we find these trades, the accounts of them, on the other books.

Q. But, so far as you know, the trades that appear on pages 1 and 2 were similar in their general character to the balance of the trades?

A. Probably were. I don't know anything to the contrary.

Q. Now, Mr. Lincoln, when a trade is marked in the first ruled column down on the page, is marked "settled" in red ink, what does that indicate?

464 A. Indicates that it was offset with some other trade on that day.

Q. That is, on the day given in that column?

A. The day given in that column, and some other trade substituted in the place of it.

Q. When you say offset you mean, do you, that you had some article bought for another customer of the same party that you had sold to for Foote, or *vice versa*?

A. Not necessarily the same party.

Q. By *vice versa* I mean if you had bought an article for Foote you had sold an article for another customer to the same man. Do you understand the question?

A. Yes; I think I do. I think you mean, for instance, if we had bought 250 tierces of lard for Foote of Oldershaw and sold 250 to Oldershaw for some other party.

Q. Yes; that is, where——

A. That would be an offset.

Q. Is that what you mean by the word offset in your previous answer?

A. Not entirely.

Q. State fully what you mean by an offset.

A. It may be an offset with a different party entirely from the one it was bought of.

Q. It was either, then, a direct settlement, was it, in the way you have described, or a ring, as known on the board of trade?

A. Yes, sir.

Q. One or the other?

A. Yes, sir.

Q. A direct settlement is where you might have the article
465 bought for Foote of Oldershaw and the same article sold to Oldershaw for another customer; that would be a settlement direct?

A. Yes; that would be settled direct.

Q. If you had this article bought for Foote of Oldershaw and you had the same article sold for another customer to Armour, you might have to make a ring to ring it up, would you?

A. Yes, sir.

Q. And so that the word settled may apply either to a direct or to a ring of three or more? Is that correct?

A. That is correct.

Q. In either case, however, you settled off the contract you made for Foote before the time of delivery arrived, did you not?

A. We settled off that one, but we have this other one open.

Q. But you settled off that particular contract?

A. That particular contract.

Q. And the red ink in this column indicates where the word settled is written, and a date is written under it, just what day you did either settle it direct or ring it up, don't it?

A. Yes, sir.

Q. Now, Mr. Lincoln, you say that in all cases where you either settled a contract made for Foote's account or rung it up that you substituted another contract in the place of it, do you?

A. Yes, sir.

Q. That is true, is it, of all the trades appearing upon Exhibit O?

A. We substituted another party.

Q. That is true, is it, upon all?

A. Yes, sir.

Q. You are prepared, of course, to show who you substi-
466 tuted in every trade here, are you?

A. Yes, sir.

Q. What contract you substituted, are you?

A. Yes, sir.

Q. In every one?

A. Yes, sir.

Counsel for the Third National bank and for J. Irving Pearce state that they will present the matter of substitution of contracts fully by a witness by the name of James B. Norton, who was the bookkeeper of S. G. Hooker & Company and who made the entries, and for that reason the cross-examination of the witness Lincoln is deferred until such statement is produced, the right being reserved to

counsel for Rice to cross-examine Mr. Lincoln upon that subject hereafter if he desires so to do.

Redirect examination.

By Mr. RIDDLE:

Q. Mr. Bisbee asked you some questions when you were last upon the stand, Mr. Lincoln, touching the matter of substitution, placing one contract for another in the conduct of the business of S. G. Hooker & Company on the board of trade. I would like for you to explain what you have since done in regard to that matter in the way of informing yourself as to the fact whether or not the firm of S. G. Hooker & Company did substitute, according to the meaning of Mr. Bisbee's idea, one contract for another; for instance, as when you released one party who was obligated to Foote
467 whether or not you substituted some other party in the place of the one released. Please state, as fully as you can, what you did.

A. Since that examination I have been examining the book more fully, with the assistance of Mr. Norton, who kept the book, and we find there was a substitution in every case. We had a party that was substituted in the place of the one that was settled up.

Q. From the examination that you have made of your books and from the information you have obtained in that way, do the books show that you had an account upon your books showing that Foote was in the relation of principal all of the time to some other party in the transactions which you made for him; some other party than the firm of S. G. Hooker & Company?

A. Yes, sir; found it so in all the cases; couldn't be otherwise unless we were trading for ourselves, which we were not.

By Mr. JACKSON: I call your attention to the question on page 208, where Mr. Bisbee asked you whether, commencing at the beginning of the option book up to page 40, you find any article bought or sold for the account of Ira Foote. If you desire to make any statement or change in your answer, please do so, and at the same time please state how the option book was kept, how it was divided, if it was divided.

A. I was not aware at the time it was divided into these divisions. I think I was asked if any trades appeared in this book previous to page 40 under date of March 28th, 1875, and I find, on page 82, the book commences at November, 1874 on grain. There is provision in the first part. In the first part of the book it is provision. In the middle part of the book it is grain, and in the back part of the book
468 it is pork. We probably commenced on the book with grain in 1874, while we were using another book on lard, because we didn't commence lard in this book till 1875.

Q. Who kept the book?

A. J. B. Norton.

Q. A clerk in the employ of S. G. Hooker & Company?

A. Yes, sir.

APRIL 3D, 1886.

S. G. HOOKER recalled for further cross-examination by Mr. RIDDLE:

Q. What is this book, Mr. Hooker?

A. It is our option book; option book of S. G. Hooker & Company.

Q. What does it show?

A. Shows the purchase and sales for our customers.

Q. Shows the prices at which property was bought?

A. Yes, sir.

Q. And at which property was sold?

A. Yes, sir.

Q. Is that book a correct account of the transactions had for the customers of S. G. Hooker & Company during the times mentioned in the book?

A. I judge so; except certain irregularities by my book-keeper that I have seen since is all the knowledge I have about it.

Q. Your practice was to have your books kept correctly?

A. Yes, sir; I hoped they were.

Q. Your intention was to have your business done regularly?

A. Yes, sir.

469 Q. And your books and accounts kept correctly?

A. Yes, sir.

Q. And, so far as you know, that book is a correct account of the transactions of S. G. Hooker & Company, so far as they show those transactions?

A. Yes; so far as this book shows.

Q. You never at any time directed an incorrect account of a transaction to be entered in any of your books?

A. I never did.

Q. Did you carry on the transactions had for and on account of Foote in conformity with the rules and regulations and customs of the board of trade under those rules.

A. Generally under the rules of the board of trade? Yes; of course.

Q. Were you not required, as a member of the board of trade, to carry on and conduct the business in which you were engaged upon the board of trade under and in conformity to the rules of the board of trade?

A. Well, there are different opinions as to what the rules of the board of trade are regarding substituting option trades.

Q. I will put it in another way, so you will understand it. Did you not agree when you became a member of the board of trade to be bound by all its rules and regulations?

A. Certainly.

Q. And to conduct and carry on your business in conformity with those rules?

A. Yes, sir.

Q. And, so far as you know, this account book, called the option

ledger, was kept in conformity with the rules and regula-
470 tions of the board of trade at the time the book was made up?

A. I supposed it was.

Q. It was your intention to have it done so?

A. My intention was to have it done correctly and honestly.

Q. And that each transaction set down in that book should be a correct and faithful account of the transaction?

A. Yes, sir.

Q. That it should give the proper name of every party from whom you purchased property, the price at which it was purchased, the correct and proper name of any and every party to whom you sold property for and on account of a customer, and the price at which it was sold?

A. Yes, sir.

Q. The terms of the contract and all about it, so far as the book showed anything, should be put down correctly?

A. Yes, sir.

Q. In regard to the transactions that you had for Mr. Foote, did the firm of S. G. Hooker & Company send him accounts of those transactions?

A. Yes, sir.

Q. They were accounts taken from this book largely, were they not?

A. I don't know whether they were taken from this book or not.

Q. You rendered statements of account?

A. If you will let me answer in that connection——

Q. You sent him a statement of account of the transactions set down to his account in that book, did you not, or furnished him with a statement of the transactions made for him by your firm, as set down in that book?

A. I can only answer in this way, sir: Late in my copart-
471 nership with Mr. Lincoln I found that Mr. Lincoln and Mr. Norton were making incorrect, improper entries and improper accounts rendered to Mr. Foote, so that I can't testify as to the truthfulness of any accounts sent to Ira Foote off from this option book.

Q. When did you ascertain that?

A. Oh, two or three months before our settlement with Mr. Foote.

Q. Did you notify Mr. Foote of that at the time?

A. No.

Q. Did you ever notify him until long subsequent to the time when the firm of S. G. Hooker & Company dissolved?

A. Yes, sir.

Q. He didn't know it at the time he transferred the notes of the Couch estate to the firm of S. G. Hooker & Company, did he?

A. He knew there had been a large addition to his account trumped up by Lincoln and——

Q. But he didn't know that until after he had made as assignment of the notes, did he?

A. Yes; I think he did.

Q. Who told him?

A. I think I told him. I was satisfied our books were incorrect, and that the account had been enlarged illegitimately and improperly.

Q. And still he turned over the notes to settle an account which you had told him was a fictitious account?

A. Yes. He was not here; he instructed Mr. Rice to turn them over.

Q. And he turned them over knowing that he was turning them over to settle an account which was fictitious?

A. Oh, well, he made this statement to me: that he didn't—

472 he wanted to get out of it and save me any further trouble.

Q. He had such statements of account as were ordinarily furnished to your customers prior to that time, had he not?

A. Yes; I think so.

Q. Had he ever complained?

A. About the correctness of them? He couldn't know the correctness of them.

Q. He never found any fault with them, as a matter of fact?

A. Yes; he had.

Q. What way?

A. Well, in various ways: that we sold too quick for him; that we settled trades too quick for him.

Q. What did you tell him?

A. I told him that that might be.

Q. Told him it was all right if you did?

A. That I had no remedy in matters of irregularity that had occurred between Mr. Norton and Mr. Lincoln.

Q. And yet you took the notes which he assigned to you knowing that they were taken by your firm for the purpose of settling a fictitious and fraudulent account?

A. Well, he owed us money and the account was made out by Mr. Lincoln and Mr. Norton; of course I had no jurisdiction to dictate how it should be settled.

By Mr. JACKSON: Did you ever receive any of the notes of the Couch estate yourself?

A. No, sir.

Q. Did Mrs. Hooker ever receive any?

A. I don't know; never saw her receive any.

Q. Do you know whether she ever received the proceeds of

473 any of the notes of the Couch estate?

A. I never saw her receive any.

Q. Do you know whether the firm of Dent & Black collected any money from the Couch estate and gave that money to Mrs. Hooker?

A. I think they did.

Q. Please state the circumstances of that collection.

A. I think Dan. Tenney surrendered one of those notes and Mr. Foote gave that note to my wife.

Q. What was the consideration of that?

A. For many favors that had been rendered him in my family from year to year when he lived in my family 7 years.

Q. When was that note given to Mrs. Hooker?
A. Don't know.
Q. Can you tell the year?
A. I can't.
Q. Was it 3 years ago?
A. I don't remember the date.
Q. Four years ago?
A. Couldn't tell the date.
Q. Was it 5 years ago?
A. I couldn't tell the date.
Q. When was it given to Dent & Black for collection?
A. Couldn't tell the date.
Q. Who gave it to them for collection?
474 A. My wife, I suppose; I didn't.
Q. Did you give it to her?
A. I did not.
Q. Mr. Foote gave this note to Mrs. Hooker direct?
A. I don't know.
Q. Do you know whether it was put on deposit for Mrs. Hooker?
A. I don't know.
Q. How much money did Dent & Black collect on the note?
A. I don't know.
Q. Was any portion of that money ever given to you by Mrs. Hooker?
A. Not any; not a dollar.
Q. You say you don't know the amount of money which Dent & Black collected?
A. I do not.
Q. Were you present at the time Mr. Foote gave the note to Mrs. Hooker?
A. I was not.
Q. You don't know how Mrs. Hooker got the note?
A. I do not.
Q. You don't know who Mr. Foote gave the note to for Mrs. Hooker?
A. I do not; never had anything to do with the transaction.
Q. When did you first hear of it?
A. Never had anything to do with the transaction *pro* or *con*.
Q. When did you first hear that Mr. Foote gave this note to Mrs. Hooker?
A. Can't tell you when.
Q. You can try to remember?
A. No; I couldn't.
475 Q. How do — happen to remember all these other transactions so clearly?
A. Because they came under my jurisdiction and observation every day.
Q. This never came under your observation?
A. Not at all.
Q. How do you happen to know anything about it?
A. I can't tell you.

Q. When did you hear of it?
A. Some time afterwards my wife told me of it; some time afterward.
Q. When was this?
A. I can't tell you.
Q. When did they collect this money?
A. Couldn't tell you.
Q. Three months ago?
A. Couldn't tell you.
Q. Six months ago?
A. Can't tell.
Q. One year ago?
A. Couldn't tell you.
Q. Or two years?
A. Can't tell you.
Q. Have you had any conversation with Dent & Black about the collection of this account or this money?
A. I have.
Q. When was it?
A. Can't tell you.
Q. Was it within six months?
A. Couldn't tell you.
476 Q. Within a year?
A. Can't tell.
Q. Within two years?
A. Can't tell.
Q. When did you have it?
A. Can't tell that exactly.
Q. Was it within 5 years?
A. Well, I should presume so.
Q. Where did you have it?
A. That I couldn't tell you.
Q. In the office of Dent & Black?
A. I might have had a conversation in their office; might have met him on the street.
Q. Did you have the conversation with Mr. Dent or Mr. Black?
A. That I can't tell you, Mr. Jackson; might have had a conversation with both.
Q. Did you ever have any conversation with Mr. Dent on the subject?
A. Might have had; don't remember whether I did or not.
Q. Did you ever have any conversation with Mr. Black about it?
A. I think I did; yes, sir.
Q. When did you have that?
A. I don't remember the date, Mr. Jackson.
Q. Was that within two years?
A. I can't remember the date.

By agreement of counsel the taking of further testimony in this case is adjourned to Tuesday, April 6th, 1886, at 10 o'clock a. m.

477 APRIL 7TH, 1886.

Counsel present as before.

JAMES B. NORTON, being first duly sworn, testified on behalf of Third National bank as follows:

Q. What is your name?
A. James B. Norton.
Q. What is your business?
A. Commission merchant.
Q. How long have you lived in Chicago?
A. About 18 years.
Q. Are you a member of the board of trade?
A. I am.
Q. How long have you been a member of the board of trade?
A. Since 1873.
Q. Were you ever in the employ of S. G. Hooker & Company?
A. I was.
Q. How long were you in their employ?
A. Seven or eight years.
Q. What was your position there?
A. Book-keeper and general clerk.
Q. Did you do any trading for the firm?
A. I did.
Q. Did you have charge of the book which has been introduced in evidence known as the option book?
A. I did.
Q. Did you make the entries in that book?
A. Part of them; not all of them.
Q. Who made the others?
478 A. I think Mr. Geltmacker made some of them; perhaps another clerk they had made some. I don't remember now. I think the majority of them I made.
Q. Were they made under the direction of S. G. Hooker & Company?
A. Yes, sir.
Q. One of the books of S. G. Hooker & Company?
A. Yes, sir.
Q. You prepared some time ago a statement of the account of S. G. Hooker & Company with Ira Foote. Please look at these printed statements, Exhibits D & C, and see if you can remember whether those were the statements.
A. I should say these were copies of the originals that I made out.
Q. The originals were made out by you?
A. I believe they were.
Q. Please look at Exhibit D, and see if you can tell from that exhibit if there was any grain or lard or any other commodity received on account of Foote and delivered to him.

Objected to as incompetent by Mr. Bisbee, and as an improper way of proving any fact.
(Question withdrawn.)

Q. Please state whether you know if there was any grain or lard or any other commodity purchased for Foote by S. G. Hooker & Company and delivered to him.

Objected to as improper; and counsel for James H. Rice,
479 complainant in cross-bill, asks to cross-examine the witness at this stage for the purpose of ascertaining how he knows it, if the answer should be that he does know it, for the purpose of better stating the objection.

By the MASTER: He may answer the question.

A. I do know.

Q. What were your duties on the board of trade?

A. Buying and selling.

Q. Any particular class of goods or commodity?

A. No; I did all kinds of work there; at times I had the trading in grain, at other times in provision, largely.

Q. Did you ever hear or know that there was any special contract made by the firm of S. G. Hooker & Company with Foote?

(Objected to as calling for hearsay testimony.)

Q. Do you know of any contract for Foote with S. G. Hooker & Company?

A. I do not.

Q. You knew that the firm of S. G. Hooker & Company were buying and selling on the board of trade for the account of Foote?

A. I did.

Q. Did you make any purchases or sales while you were in the employ of S. G. Hooker & Company on account of Ira Foote?

A. I did.

Q. By whose direction?

A. By the direction of Mr. Hooker.

480 Q. How were those purchases and sales made, under the direct rules and customs of the board of trade?

Objected to for the reason that the rules of the board of trade show for themselves and are the best evidence, and the manner of doing the trading should be stated by the witness and not the conclusion of fact put in his answer as to whether they were or were not under the rules of the board of trade.

It is stipulated by counsel that either party to this controversy may put in evidence such portion of the rules of the board of trade in force at the time of the transactions between S. G. Hooker & Company and Ira Foote as they may desire.

Q. During what years were you in the employ of S. G. Hooker & Company?

A. I can't tell how long ago it was—several changes in the firm, but I was in their employ beyond 1870, up to the time they stopped business, or about that time.

Q. What year was that?

A. I think 1876 or 1877.

Q. You were in their employ during the period of time covered by Exhibit D?

A. Yes, sir.

Q. Were you familiar with the rules of the board of trade during that period?

A. Yes, sir; in a general way.

481 Q. State whether the transactions of S. G. Hooker & Company on the board of trade were conducted in accordance with the rules.

(Objected to.)

By the MASTER: The master deems the question as propounded improper, since it seems to the master to call not only for facts but for the opinion of the witness whether transactions done in a certain way were in accordance with the rules of the board of trade. The master thinks the witness should be inquired of as to the course of dealings between the parties and the facts in respect to the nature of the transactions between the parties.

To which ruling of the master counsel for the Third National bank except.

Q. Do you know whether there is any difference between the trades made by S. G. Hooker & Company for Ira Foote and those made by them for their other customers?

Objected to as calling for a comparison, which is immaterial and improper. (Objection sustained.)

To which ruling of the master counsel for the Third National bank except.

482 Q. In making trades on the board of trade on account of Ira Foote please state fully how they were done and what was done.

A. You want to know the method of trading on the board of trade?

Q. Yes.

A. You go into the wheat pit, or wherever the trading is done, whatever we want to do, and offer to buy or sell, as the case may be; when somebody else meets or bids or offers we make a trade and enter it upon a trading card, bought or sold for so and so, at a certain price; usually make a memorandum for whose account that trade is made, so that I know when I want to enter it upon my book at the office, if I am making more than one trade, trading for more than one man.

Q. Do you know whether Mr. Foote was notified of the purchases or sales made for his account?

A. He was.

Q. After making the entry upon your card do you transfer it to any book?

A. Yes, sir; transfer it; it is copied off from that. I usually carried a book in my pocket, and do now in my business, that I copy off from my card all my transactions; have them right in my pocket on 'change, so I can refer to their account any time. This

card can be copied in the option book at the office, copied direct from the cards.

483 Q. You have already testified that you knew that certain commodities had been received and delivered to Mr. Foote. Please state how you know; what goods they were, or what commodities.

A. Purchases and sales for him?

Q. Yes.

A. Well, from this statement and from my memory, I know that we received corn for him and at one time some lard.

Q. When did you receive corn, and how much?

A. I couldn't tell from this the date the corn was received.

Q. When was it bought?

A. I would have to refer to the option book to tell the date of purchase and receiving the corn. I can tell from this about the time it was carried for him. We took in the warehouse receipts and paid for them and carried them, according to one account here, 27 days; it was probably the second or third of the month before the property was delivered and carried to the first of the following month.

Q. Do you remember how much corn it was?

A. 30,000 bushels, I think, in that item.

Q. How much was paid for it?

A. $23,755.92.

Q. Was that received by your firm, S. G. Hooker & Company, for Foot?

484 A. Yes, sir.

Q. Was it sold out for him?

A. Yes, sir.

Q. And charged to him?

A. Yes, sir.

Q. Was there any charge for storage or commission?

A. There was.

Q. How much was the charge for that?

A. Storage, $420.54; insurance, $157.50, and commission, $150.

Q. How many days do you say that corn was carried or was in the possession of S. G. Hooker & Company?

A. Well, 30 days. He is only charged interest on 27 days. I don't just understand that, but from the item received about May 1st and delivered out June 1st, 1875, he was charged interest on carrying it for 27 days only.

Q. Was there any other corn transaction besides that one you speak of cash transaction?

A. Not at that time, I guess.

Q. Or later? See whether there was any on or about December 30th, 1875.

A. December 31st, 1875, there was an item credited up of 30,000 — cash corn.

Q. You stated there was a purchase of lard. Please state when that purchase was made and the amount and how long it was carried.

A. On June 1st, 1875, 250 tierces paid for, $12,600.62. On the 7th he is charged with storage and insurance and commission amounting to $169.89. We stored this; took in cash property here and delivered it out again very soon, within a day or so, so that I can hardly separate these accounts, only by these charges indicated in that way.

485

Q. Did Mr. Foot ever give you any instructions in buying or selling?

A. Not personally to me, only as he gave them in the office at times.

Q. To whom would he give them then?

A. He would give them, his general instructions, there in the office to Mr. Hooker, which we all listened to.

Q. What were those instructions?

A. As to buying and selling at given prices.

Q. Did he ever give any special instructions?

A. Well, only as to price and what he wanted bought.

Q. Did he ever say that he wouldn't advance any money?

A. I never heard him say so.

Q. Did he ever say that no grain or commodity must be received or carried for him?

Objected to.

Q. Please state what was said by Mr. Foote when he gave any instructions.

A. He would give instructions to buy him a certain amount of wheat or corn or lard. If he wanted 30,000*00* bushels of corn he would say so, and we must buy it for him. I couldn't tell as to any special amount he would give an order for, but I know orders were given either at the office or to Mr. Hooker or to Mr. Geltmacker to buy this property. Mr. Geltmacker did a great deal of the communicating between the firm and Mr. Foote.

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Q. Did you ever hear Mr. Foote or did Mr. Foote ever tell you or tell any member of the firm of S. G. Hooper & Company in their presence not to buy or receive any commodity on the board of trade?

(Objected to as incompetent and improper)

A. No, sir.

Q. Do you know whether any purchases or sales were made on account of Foote except upon his order?

A. None that I know of.

Q. Can you tell how often Mr. Foote was notified of the sales and purchases made on his account?

A. No; I couldn't state the number of times. I knew Mr. Geltmacker went to the hotel several times to see him on different trades and to notify him of purchase- and sales; as to the number I couldn't tell.

Q. How frequently would he come to the office of the firm?

A. Well, he would be in there nearly every day for awhile that

he was there. I think during these transactions he was there at least 2 or 3 times a week; used to stay in the office considerably.

Q. I think it has been stated that you were a partner of Mr. Lincoln's. Were you ever his partner?

487 A. I never was.

Q. Did you ever personally receive any directions from Mr. Foote to buy or sell on the board of trade?

A. Nothing that I can recall now; only when it was given in a general way to the firm.

Q. Mr. Hooker in his former testimony testified that the accounts of Foote were garbled and changed by Mr. Lincoln and you. Do you know whether that was the fact?

A. They were never garbled in any shape up to the time they left my hands.

Q. Could they have been garbled by any one else?

A. I don't think they could without my knowledge.

Q. Did you never hear they had been garbled or changed?

A. No; I never did.

By Mr. RIDDLE: Have you the book there—the purchase and sales book?

A. Yes, sir.

Q. Does that contain an account of all the transactions made by the firm of S. G. Hooker & Company for and on account of Ira Foot?

A. I think it does.

Q. Have you examined Exhibit O?

A. I have not compared it with this book.

Q. There is a transcript from this book and from the ledger

488 of all the accounts of trades ever set down and charged to Ira Foote. Have you examined that book recently?

A. I looked it over a little the other day.

Q. What proportion, if you know, of the accounts were entered by you?

A. I didn't look it over as to that point, but I should think nine-tenths of them were. This is my handwriting all through here (indicating).

Q. Was that kept as a book of original entry by the firm of S. G. Hooker & Company?

A. Yes, sir.

Q. What does it show or purport to show in regard to the transactions carried on by S. G. Hooker & Company for and on account of their customers?

A. Shows the transactions as they were made from day to day for their customers—purchases and sales on the board.

Q. Does it show the manner in which the transactions were carried on—show, for instance, what property was bought?

A. Yes, sir.

Q. When it was bought?

A. Yes, sir.

Q. From whom it was bought?

A. Yes, sir.

Q. When it was sold?
A. Yes, sir.
Q. To whom it was sold?
A. Yes, sir.
Q. How it was settled?
A. Yes, sir.
489 Q. Whether the property was received or delivered or not?
A. Yes, sir.
Q. And the prices at which it was bought and sold?
A. Yes, sir.
Q. Shows all of these facts, does it?
A. I think it does—does to the best of my recollection.
Q. I will ask you to look at that, Mr. Norton, and state whether you have ever seen it before (producing paper).
A. I have.

By Mr. RIDDLE: We had prepared from the book of original entry kept by S. G. Hooker & Company a statement showing all of the transactions made by the firm of S. G. Hooker & Company for and on account of Ira Foote, including the kinds of property bought, the time when it was purchased, the price at which it was purchased, the date of the sale of any property for Mr. Foote, the price at which it was sold, and the time when it was sold, and the names of all the parties from whom any property was purchased, and to whome any property was sold, and how each transaction was settled, and whether or not any property was delivered or received on any purchase or sale, and from whom it was received and to whom it was delivered,
490 and what transactions were settled and offset under the custom and practice of the board of trade, who the substituted party was, and when they were substituted.

Q. I will ask you to look at that particular paper and state what it is.

(Objected to the question or to the statement in any form or manner as competent evidence in this case.)

The statement referred to submitted to counsel for James H. Rice, complainant in cross-bill, for examination.

By agreement of counsel the taking of further testimony in this case is adjourned to Thursday, April 8th, 1886, at 2 o'clock p. m.

APRIL 30TH, 1886.

Counsel present as before.

Examination of JAMES B. NORTON continued.

By Mr. RIDDLE:

Q. You have testified, Mr. Norton, that Exhibit O is taken *is taken*, so far as you know, from the book of account kept by the firm of S. G. Hooker & Company, all except the first 2 pages of the exhibit?
A. Yes, sir.
Q. Can you tell from the book of account what the first transac-

tion in lard was, and with whom it was made, by the firm of S. G. Hooker & Company for the account of Ira Foote or what was
491 done with the property and how the trade was made and settled?

A. By referring to the book I find a transaction here, a purchase of 250 tierces of prime steam lard, seller June, from P. G. Oldershaw, on March 25th, at $14.25 a hundred, for the account of Ira Foote.

Q. What is the price at which it was bought?

A. $14.25; fourteen cents and a quarter.

Q. A pound?

A. Yes, sir.

Q. To whom was the lard sold?

A. Sold to I. N. Maynard.

Q. When?

A. March 29, at $14.55 a hundred.

Q. Was there a profit on that transaction?

A. Yes, sir.

Q. What was done with that profit?

A. Credited to Mr. Foot's account.

Q. Can you tell when the next transaction for the account of Mr. Foot was had on the book and what was done with it?

A. The second transaction, as I see it hear, is 500 tierces prime steam lard bought for June, of W. & J. Rogan, at $15.60.

Q. $15.60 a hundred?

A. Yes, sir.

Q. What was done with it?

A. It was sold on May 28th to W. & J. Rogan at $14.

Q. Was there a loss on that transaction?

A. Yes, sir.

Q. How was that settled?

492 A. The loss was charged up to Ira Foote's account.

Q. Did the sale of lard to Rogan settle the transaction?

A. It settled the transaction. Yes, sir.

Q. By whom was the entry made of the purchase and sale and settlement?

A. The entry I made; is in my handwriting.

Q. When was it made? At the time?

A. At the time. Yes, sir.

Q. Is that all there is about that transaction in the books.

A. It was made in 500 lots and so entered up; but it was settled in lots of 250. All our settlements are made that way. If we bought 1,000 tierces of a man we would settle it up in 250 lots.

Q. That was the practice and custom on the board of trade?

A. Yes, sir; that is the standard; the same as 5,000 — grain.

Q. Was Mr. Foote notified of it at the time?

A. I believe so, to the best of my knowledge, as he was notified of all his transactions.

Q. Was an account of the purchase and sale of that lard made and sent to him?

A. The books show the account was made June first. Accounts were either sent to him or given to him at the office.

Q. Have you any recollection in regard to anything about that transaction except what appears from the book; any special recollection?

493 A. No; I haven't.

Q. When was the next transaction in lard made for the account of Ira Foote?

A. April 28th, purchased 250 tierces of lard for June of Joseph Jones, $15.82½.

Q. What were the facts in regard to the disposition and settlement of that transaction?

A. On May 29th we sold out for account of Foote 250 tierces of lard for June to Armour & Company at $14.30.

Q. There was a loss on that transaction?

A. Yes, sir.

Q. What was done with that?

A. It was charged to Mr. Foote's account.

Q. Did that settle the transaction?

A. Yes, sir.

Q. Both as to the firm of S. G. Hooker & Company and as to Mr. Foote?

A. Yes, sir.

Q. The parties were all released from any obligation, were they?

A. Yes, sir.

Q. To deliver or receive the property by the sale to Armour?

A. Yes, sir. The sale was made May 29th. The lard was received, according to this, and delivered out on June first.

Q. The lard bought was received by S. G. Hooker & Company for the account of Ira Foote, was it?

A. Yes, sir. On June first.

Q. And sold for his account and delivered for S. G. Hooker & Company?

494 A. Already been sold for his account and delivered on June first.

Q. That closed up that transaction?

A. Yes, sir.

Q. Do you know anything about whether Mr. Foote was notified of that transaction or not?

A. Nothing special as to that transaction, only that he was notified of all——

Q. Except what the books show?

A. No, sir.

Q. When was the next tranaction in lard?

A. On April 30th bought of J. S. Perrionette & Company 250 tierces of lard for June delivery at $15.72½.

Q. $15.72½ a hundred.

A. Yes, sir.

Q. For delivery in what month?

A. June.

Q. You may state what was the course of that purchase.

A. On June 3rd they sold W. & J. Rogan 250 tierces, cash, at $13.75—that is, they probably received the property and paid for it and sold it out while they had possession of the property.

Q. Did they sell it out for the account of Mr. Foote?

A. Yes, sir.

Q. At what price?

A. $13.75.

Q. There was a loss in that transaction?

A. Yes, sir.

495 Q. That was charged to Mr. Foote?

A. Yes, sir.

Q. Did that settle that transaction entirely?

A. Yes, sir.

Q. When was the next transaction in lard?

A. On June 22nd, this must have been in 1876, they bought of the Chicago Packing and Provision Company 250 tierces lard for March for account of Ira Foote, at $12.20.

Q. What was the course and disposition of that contract?

A. On February 5th they sold to S. W. Butcher & Sons 250 tierces lard for March, at $12.50, for account of Foote.

Q. Did they settle that contract?

A. Yes. sir.

Q. Was there an offset or substitution?

A. No; the purchase and sale are open—settled February 12th. It was open till after the sale was made. Sale was made February 5th, so there was no substitution there.

Q. There was no occasion for any?

A. No, sir.

Q. And there was no occasion for any offsets or substitution in any of the purchases and *sells* of lard about which you have testified so far?

A. I think in the case of the second item that I testified about—the 500—there was.

Q. State what the books show in regard to that.

A. In the case of one 250 of that the settlement was made

496 previous to the sale and R. W. Roloson substituted.

Q. It was offset?

A. Yes, sir.

Q. How was that done?

A. It was done by settling this 250 and substituting the other in place of it—another contract they had with R. W. Roloson at $15.67½.

Q. From whom was the party bought first in that case?

A. In that case it was W. & J. Rogan.

Q. When the first purchase was settled you substituted the firm of R. W. Roloson in the place of Rogan?

A. Yes, sir. R. W. Rolison delivered the property.

Q. When was that substitution made?

A. May 11th.

Q. Made at the time you released Rogan?

A. Yes, sir.

Q. Made for the purpose of releasing Rogan?

A. Yes, sir.

Q. Of putting the firm of Roloson & Company in the place of Rogan?

A. Yes, sir.

Q. Does your book show that fact?

A. Yes, sir; the entries made here in red ink show the amount and the date at which this transaction is settled, and the other substituted for it.

Q. When was the next transaction in lard?

A. Next transaction is a purchase on March 31st, 1876, of 250 tierces of lard for May. This purchase was made of J. J. Richards—

250 tierces of lard for May at $14 a hundred.

497 Q. At what date?

A. On March 31st.

Q. State what was done with that purchase—how it was handled and disposed of.

A. The transaction was on April 6th; the contract was transferred to W. P. M. Laren & Company at the same price.

Q. In what way?

A. Evidently Richards acted as agent or broker, I should think. If there had been any substitution by making another contract there would have been an entry made for it. It is often the case they make a trade, for instance to Richards, and if it goes against him they call him margins, and he gives another party; he is a broker, and if he is called to put up margins he will give——

Q. In that case who was put up in place of——

A. W. P. McLaren purchased at the same price, in that instance.

Q. What was the further disposition of that contract?

A. April 25th sold Alexander Geddes 250 tierces lard for May at $13.27½, for the account of Ira Foote.

Q. Was there a profit or a loss on that?

A. A loss.

Q. And that loss was charged to Mr. Foote's account?

A. Yes, sir.

498 Q. Was there any offset of the original contract in that case with anybody?

A. There was an offset of the purchase to C. Counselman & Company, substituted in the place of McLaren, for $14.07½.

Q. Does the book show that fact?

A. Yes, sir.

Q. When was Counselman & Company substituted?

A. On April 20th.

Q. What was done with the original transaction for the purchase of that lard from McLaren & Co., and how was anything done with it?

A. On April 6th, the date of the transfer, it was settled, and Charles Counselman substituted in place of it.

Q. At the time of settlement?

A. Previous to settlement; that was on April 20th.

Q. What did your firm have from Counselman & Company at that time, if anything?

A. They had a contract for 250 tierces of May lard, at $14.07½, 7½ cents difference from the original contract.

Q. And what, from the books, appears to be the relation of Counselman & Company, from that time, to Ira Foote?

A. That contract was held for the account of Ira Foote in place of this one.

Q. Does your book show that?

A. Yes, sir.

Q. The entry was made by you?

A. The entries were made by me, the trade was not.

499 Q. What was the further history of that transaction?

A. It was transferred again to Cooley, Dwight & Gillette.

Q. How was that done?

A. In the same way as the previous account.

Q. And from that time on what did you have, if anything, for Cooley, Dwight & Gillette? When I say you, I mean the firm of S. G. Hooker & Company.

A. They had a contract for the purchase of 250 tierces of May lard for Cooley, Dwight & Gillette at $13.85.

Q. For the account of Ira Foote? For whose account?

A. Substituted for this original contract.

Q. For Foote?

A. For Foote. This contract, on April 25th, was settled with a sale to Alexander Geddes.

Q. Contract for——

A. Cooley, Dwight & Gillette.

Q. How was it settled—by what means?

A. It was the usual way of settling contracts on the board.

Q. You mean you sold the property?

A. The property had been sold previous to this.

Q. Have you stated to whom it was sold?

A. I stated that originally.

Q. Sold to Alexander Geddes?

A. Yes, sir.

Q. Was there anything further about that contract than

500 you have stated, as shown by the books?

A. Nothing that I remember.

Q. Was there a loss or a profit on that purchase and sale?

A. There was a loss.

Q. And that was charged to the account of Ira Foote?

A. Yes, sir.

Q. What is the next transaction in lard or provisions and when was it made?

A. On April 25th, bought of Alexander Geddes 250 tierces of lard for June at $13.42½ for the account of Ira Foote.

Q. What was done with that purchase afterwards?

A. Purchase was sold on May 2nd to J. K. Fisher & Company—250 tierces for June at $12.27½.

Q. Were there any offsets?

A. Contract with Geddes was afterwards offset by one with W. & J. Rogan.

Q. When?

A. April 29th.

Q. What was the position of Rogan in regard to that contract?

A. He was substituted in place of Geddes.

Q. At the time you released Geddes?

A. Yes, sir.

Q. Was there any offset or substitution in the course of that transaction before it was closed up finally?

A. After this the contract with W. & J. Rogan was settled and Washington Butcher's Sons substituted at $13.40.

Q. At what time were they substituted; was it not when you settled the contract with Rogan?

501 A. Yes, sir.

Q. What relation, then, did Washington Butcher's Sons assume in the contract?

A. Had a contract with them for the purchase of the lard for the account of Foote.

Q. Was there any further history in regard to that transaction before the time it was finally closed up?

A. No, sir.

Q. What was done with the lard finally or the purchase?

A. Purchase was settled with a sale to J. K. Fisher & Company.

Q. The entries in regard to that transaction were all made by you?

A. All there that I have read.

Q. And the dates and memoranda show, so far as you know, the exact transaction?

A. Yes, sir; it is all done in my writing; entries all made at the date of the transaction.

Q. When was the next transaction in provisions?

A. February 29th, 1876, purchase of 250 barrels of mess pork for March at $21.40; S. D. Foss & Company.

Q. Bought for the account of Foote?

A. Bought for the account of Foote.

Q. State what was the course of that transaction.

A. That transaction is different from the others, as he sold the pork off February 4th. We made a contract for Mr. Foote with John L. Hancock, selling him 250 barrels of pork at $20.52½.

502 Q. And you bought it?

A. This was sold for the account of Foote, and bought on February 29th at $21.40.

Q. Was there a profit on that transaction?

A. No, sir; a loss. The property was delivered to Hooker & Company on the first or second of March, and delivered out on a sale.

Q. Delivered by whom to Hancock?

A. S. D. Foss & Company.

Q. They sold it to Hancock?

A. John L. Hancock.

Q. And delivered it to him?

A. Yes, sir. I made the original statement that the transaction was made previous to the property received and delivered on this contract.

Q. The property was sold before it was purchased?

A. Yes, sir.

Q. And it was purchased in February?

A. Sold on February 4th. They made a contract for Foote and sold 250 barrels of pork at $20.52½.

Q. For delivery in what month?

A. For delivery in March—following month.

Q. And it was bought?

A. On February 29th it was bought of S. D. Foss & Company.

Q. First or second of March?

A. On the first of March, I think. Most of these deliveries are made the first of the month.

503 Q. Do the entries in your book show that the property was delivered to Hooker & Company?

A. Yes, sir.

Q. This particular property?

A. In this case it does.

Q. And does it show that it was delivered by them to Hancock?

A. The property was received for them. I couldn't say this identical property. 250 barrels cash pork was delivered out on this contract; the books show they received the pork, cash. The purchase was settled on March 1st by the delivery of that cash property.

Q. You say there was a loss on that transaction?

A. Yes, sir.

Q. Was there an account made of it and sent to Mr. Foote?

A. Yes, sir.

Q. The entries in the book indicate that?

A. Account made March 2nd.

Q. That is all there was to that purchase and sale.

A. I believe so.

Q. When was the next one, Mr. Norton?

A. On April 11th, 1876. This sale was made before the purchase. On February 29th they sold to S. D. Foss & Company 250 barrels of pork, at $21.90, for account of Ira Foote; for that they substituted Armour & Company at $20.90. On April 11th they bought 250 — pork for May delivery, to fill this contract, at $22.22½.

Q. Per barrel?

504 A. Per barrel.

Q. Did that close up the transaction?

A. It closed up the transaction as far as Foote was concerned—this sale to Armour. The purchase was settled April 26th.

Q. How?

A. It was settled in the usual way of making settlements on the board.

Q. Settled by purchase of 250 barrels of——

A. That I have testified to before this purchase was made; you

wanted to know how it was settled. This was settled in the usual way that they settle, by ringing upon the board.

Q. But you bought an equivalent amount of property to settle the sale that you had made on the 29th of February previous?

A. Yes, sir; they bought the property on April 11th.

Q. Are there any other transactions, so far as you know, as shown by the books, in provisions, pork, or lard, made by the firm of S. G. Hooker & Company for the account of Ira Foote?

A. I think this is all in provisions and lard.

Cross-examination by Mr. BISBEE in regard to transactions in pork and lard:

Q. Have you any recollection about the trades you have testified to, in relation to lard?

A. Yes, sir.

505 Q. What are they; what do you recollect?

A. I only recollect as these entries call it to mind; of course, I couldn't remember these transactions, each one by itself.

Q. Do you remember anything about them?

A. I do; I remember that we had transactions of this kind.

Q. That you bought and sold some lard for Mr. Foote?

A. Yes, sir.

Q. Do you remember anything further about it?

A. I know that the property was bought and sold for him, and that he was notified of the purchases, and talked about them in the office in a general way.

Q. Irrespective of the book that is before you, you don't recollect anything about them?

A. I wouldn't be able to identify any transaction away from the book.

Q. Have you any recollection independent of the book, excepting the fact that you bought and sold lard for Mr. Foote?

A. In regard to these items?

Q. Yes.

A. I haven't; no.

Q. That is the extent of your recollection, isn't it?

A. Only as these recall them to me; I couldn't tell that on a certain day we purchased certain property of a certain man for Mr. Foote.

506 Q. What have you had before you when testifying other than the option book?

A. Have had a memoranda here that I have referred to, with the numbers, in order to enable me to find them in the book—corresponding number.

Q. Who made the memorandum?

A. I don't know the man; I forget his name.

Q. You didn't make it?

A. No, sir.

Q. It was made under your direction?

A. No, sir.

Q. And it is not a copy of the book, is it?

A. It is, so far as I have examined the two and compared them.
Q. A copy?
A. The original trades are shown here the same that they are shown in the book.
Q. The same language?
A. No, sir.
Q. It is not a copy of it?
A. Not an exact copy of the book.
Q. Is it anywhere near a copy of the book?
A. Yes, sir; it shows the date of purchase, of whom they are purchased, and to whom they were sold.
Q. Let me see the memorandum?
A. It is not an exact copy, though?
Q. You first testified that on March 25th Hooker & Company bought for the account of Ira Foote 250 tierces of lard, for June delivery, of P. P. Oldershaw, did you, at $14.25 a hundred pounds?
A. Yes, sir.
507 Q. Now, that purchase is put down in your option book before you, isn't it?
A. Yes, sir.
Q. And you sold that on March 29th, did you, the same year?
A. Yes, sir.
Q. Then you had a contract open for Mr. Foote just four days, did you?
A. It was four days from the time of the purchase to the time of the sale.
Q. That is, Mr. Foote directed you to buy 250 tierces of lard on March 25th for June delivery?
A. Yes, sir.
Q. And directed you to sell it on the 29th of March for June delivery?
A. Yes, sir.
Q. And you did so?
A. Yes, sir.
Q. And you credited him with the difference between $14.25 and $14.55 per hundred pounds, less your commission?
A. This account, according to this, was rendered.
Q. I want an answer to my question. Did you credit Mr. Foote on your ledger with the difference between $14.25 and $14.55, retaining your commission?
A. Yes, sir; but not at that date.
Q. You did credit him with that difference?
A. Yes, sir.
Q. On what day did you credit it to him?
A. This account was rendered on April 19th.
Q. You say rendered. You see in red ink, do you, on your option book these words: Account, April 19th?
A. Yes, sir.
Q. In red ink?
Yes, sir.
508 Q. And that is why you say that, isn't it?

A. Yes, sir.
Q. And that is the only reason why you say it?
A. I made these entries myself, and know from my way of entering that that is the time.
Q. Do you remember anything about that account?
A. Couldn't tell as to that special account.
Q. You don't know what was done with the account after you made it?
A. After it was made it was delivered to Mr. Foote, either at the office or——
Q. How do you know it was?
A. That was the custon of doing.
Q. But you don't remember anything about its being delivered to Mr. Foote?
A. Couldn't specially — as to this account.
Q. Have you any recollection about this?
A. I have, of giving Mr. Foote accounts myself.
Q. This account?
A. No, sir.
Q. Not this account?
A. No, sir.
Q. Then, in point of fact, you have no independent recollection about this account?
A. No, sir.
Q. None whatever? Now, then, after holding that contract for four days, and Mr. Foote being credited with the difference, he had nothing more to do with that transaction, did he?
509 A. Nothing after it was——
Q. Nothing whatever?
A. After it was credited up to his account.
Q. Well, he had no interest in it, did he, after the 29th of March, 1875?
A. No, sir.
Q. And he never received this lard or delivered it, did he?
A. No, sir.
Q. And that is all there was to that transaction, isn't it, just what you have now stated?
A. So far as Mr. Foote was concerned; yes, sir.
Q. That is all there was to it?
A. Yes, sir.
Q. Now, then, on the 21st of April, 1875, you bought 250 tierces of lard for Mr. Foote?
A. Yes, sir.
Q. Who did the buying on the board of trade?
A. These purchases were evidently made by Mr. Hooker.
Q. Don't you know it was?
A. His initial I have put down here.
Q. Isn't it a fact that when you put H. down that means Hooker?
A. Yes, sir; and N. means Norton; G., Geltmacher.
Q. Hence that transaction was made by Mr. Hooker on the board of trade?

A. Yes, sir.

Q. And that was bought for June delivery, was it?

510 A. Yes, sir.

Q. At $15.60 per hundred pounds?

A. Yes, sir.

Q. On the 28th of May Mr. Foote ordered that sold out, did he?

A. It was sold that day.

Q. Did he order it sold at that?

A. I couldn't say whether he ordered it sold that day or had given us orders previously to sell it.

Q. You don't know anything about it?

A. I couldn't——

Q. You didn't sell out his order?

A. Yes; but he might have given us an order to sell at a given time.

Q. Did he in this case?

A. I couldn't say he did.

Q. You don't know whether he did or not?

A. No, sir.

Q. Do you know whether you had an order to sell it at $14 on May 28th or not?

A. Don't know that we had it on that date; couldn't remember when the order was given.

Q. You have no recollection about it?

A. No.

Q. You did sell it on the 28th of May?

A. Yes, sir.

Q. To W. & J. Rogan?

A. Yes, sir.

Q. And bought of W. & J. Rogan?

A. Yes, sir.

Q. And Hooker made the sale, did he?

A. Yes, sir.

511 Q. You bought it on April 21st of Rogan for June, and sold it on May 28th to W. & J. Rogan?

A. Yes, sir.

Q. And there was a loss of $1.60 a hundred pounds, wasn't there?

A. Yes, sir.

Q. Besides commissions?

A. Yes, sir.

Q. And you charged up, did you, in your ledger the difference between $15.60 a hundred pounds and $14 a hundred pounds to Mr. Foote and added your commissions to it?

A. Yes, sir.

Q. That was what you did with Mr. Foote?

A. Yes, sir.

Q. Mr. Foote didn't receive or deliver any lard, did he?

A. No.

Q. That was all there was to that transaction, wasn't it, what you have stated?

A. As far as Mr. Foote was concerned, yes, sir.

Q. On the 28th of April did you buy of Joseph Jones 250 — more lard for Ira Foote?
A. Yes, sir.
Q. At $15.82½ a hundred pounds?
A. Yes, sir.
Q. On the 29 of May you sold that lard for Mr. Foote, didn't you, to Armour?
A. Yes, sir.
Q. At $14.30 a hundred pounds?
A. Yes, sir.

512 Q. And then you charged Mr. Foote, did you, the difference between $15.82½ and $14.30 a hundred pounds and added your commission to the charge?
A. Yes, sir; not on that date; probably on a subsequent date.
Q. I am asking if you did that.
A. Yes, sir.
Q. That is all you did do, as far as Mr. Foote is concerned?
A. Yes, sir.
Q. That is the whole transaction, so far as he was concerned, isn't it?
A. Yes, sir.
Q. As far as he was concerned, you sold out the lard before the delivery month arrived, didn't you?
A. Bought it April 28th and sold it the 29th of May for him.
Q. That is all there is, so far as Mr. Foote is concerned, to that transaction?
A. Yes, sir.
Q. On the 30th of April you bought 250 tierces more of lard for Mr. Foote, did you?
A. Yes, sir.
Q. Mr. Hooker did the buying, did he?
A. Yes, sir.
Q. And Hooker did the buying of the lard in the preceding case also?
A. Yes, sir.
Q. And that was a purchase of lard, was it?
A. Yes, sir.
Q. At $15.72½ a hundred pounds?
A Yes, sir.

513 Q. And Mr. Foote didn't order that sold, did he, till June 3rd?
A. It was sold on June 3rd.
Q. Did he order it sold that day?
A. I couldn't say when he gave the order.
Q. You sold that to Rogan, did you?
A. Yes, sir.
Q. For the account of Foote?
A. Yes, sir.
Q. At $13.75?
A. Yes, sir.

Q. And you charged up — Mr. Foote the difference, didn't you, between $15.72½ and $13.75 and added commission to it?
A. Yes, sir; perhaps there might have been some other charges there.
Q. Were there?
A. Couldn't say without referring to the other books.
Q. They are right here.
A. But it is the same as the other transaction.
Q. That is what you did?
A. Yes, sir.
Q. On the 22nd of January, 1876, you bought 250 tierces of lard from the Chicago Packing and Provision Company?
A. Yes, sir.
Q. At $12.20 a hundred pounds?
A. Yes, sir.
Q. And Hooker did the buying, did he?
A. Yes, sir.
Q. And that was for March delivery, was it?
A. Yes, sir.
514 Q. That is to say, the seller had any time during the month of March to deliver that lard?
A. Yes, sir.
Q. To S. W. Butcher & Sons?
A. To Washington Butcher & Sons.
Q. That is the fact, isn't it—sold to Butcher & Sons?
A. Yes, sir.
Q. And you credited Mr. Foote, didn't you, with the difference between $12.20 a hundred pounds and $12.50 a hundred pounds less your commission?
A. Yes, sir.
Q. That is what you did?
A. Yes, sir.
Q. And that is all there was, so far as he was concerned, was it?
A. Yes, sir.
Q. That ended the transaction. He didn't——
A. Account was not rendered at that time.
Q. So far as he was concerned he was out of it, wasn't he?
A. Yes, sir.
Q. The credit was not actually made till February 14th?
A. No, sir.
Q. That is all he had to do with the transaction?
A. Yes, sir.
Q. He didn't receive any lard or deliver any lard—Mr. Foote didn't—to anybody?
A. No, sir.
Q. Now, Mr. Norton, on March 31st, 1876, you bought 250 tierces of lard of J. J. Richards?
515 A. Yes, sir.
Q. For the account of Ira Foote?
A. Yes, sir.
Q. At $14 a hundred pounds?

A. Yes, sir.
Q. That was for May delivery, was it?
A. Yes, sir.
Q. Mr. Hooker did the buying on the board?
A. He made this purchase.
Q. And you sold that lard on April 25th, before May arrived, did you?
A. Yes, sir.
Q. At $13.27½ a hundred pounds?
A. Yes, sir.
Q. And on April 27th you charged Mr. Foote, didn't you, with the difference between $14 a hundred pounds and $13.27½ a hundred pounds and added to that your commission?
A. Yes, sir.
Q. That is just what you did do. Did Mr. Foote have anything else to do with that transaction?
A. Nothing that I know of.
Q. Isn't that the whole transaction, so far as he was concerned?
A. Account rendered him April 22nd; presume the charge was made at that time.
Q. That is all there was with Mr. Foote, was it?
A. Yes, sir.
516 Q. You have your option book before you, haven't you?
A. Yes, sir.
Q. And it is open to the item number 1367, isn't it?
A. Yes, sir.
Q. Which shows the purchase on March 31st of this lard, at — for May delivery, and the sale of April 25th for May delivery, haven't you?
A. Yes, sir.
Q. For the account of Ira Foote?
A. Yes, sir.
Q. Now, then, have you any other entry on that option book anywhere for the account of Ira Foote of any other trades in connection with this lard?
A. I couldn't tell without referring to the other and hunting up the numbers.
Q. I want to ask you now——
A. Do you want to know whether that transaction——
Q. Is there any other entry upon your option book with Ira Foote's name attached to it in any other matter in connection with that purchase and that sale of lard?
A. Not with his name attached to it. I don't think this account was rendered him——
Q. No matter; that is another question. I am asking you if there is any other entry for the account of Ira Foote on
517 that option book in connection with that transaction except what appears under 1367?
A. The original contract there was substituted for Counselman & Company, as shown by the margin here, where I entered up in red

ink. This contract was settled up and C. Counselman & Company substituted in place of it.

Q. (Former question repeated.)

A. Not with his name.

Q. None whatever?

A. No, sir; I didn't understand the question.

Q. Now, this lard on March 31st was bought by Mr. Hooker on the board of trade, wasn't it?

A. Yes, sir.

Q. Now, then, why does your option book show that it was bought on March 31st of J. J. Richards, and that Richards' name — scratched off, and shows it was bought on April 6th of W. P. McLaren & Company?

A. There was a transfer from one party to another. Richards might have been buying it as a broker for McLaren.

Q. Do you remember anything about it?

A. No, sir.

Q. Have you any recollection about it?

A. Only as the entry recalls this to my mind. If we had made another contract with McLaren there would have been an
518 entry for it. If Richards asked us to transfer that contract, let him out of it, and put it down to McLaren I would make the entry that was.

Q. On March 31st you bought some lard of Richards on the board of trade for Foote?

A. Yes, sir.

Q. And reported it so to Foote?

A. Yes, sir. Don't know as we gave the name.

Q. Do you know whether you *you* did or not?

A. I do not.

Q. You don't remember anything about that?

A. No, sir.

Q. What was done with that contract you bought of J. J. Richards on March 31st?

A. April 6th transferred that contract to McLaren at the same price.

Q. What contract?

A. The contract with Richards.

Q. That is, you mean that you gave up Richards as the seller to you of that lard, and put down W. P. McLaren as the seller to you, did you?

A. Yes, sir.

Q. That is just what you did?

A. Yes, sir.

Q. Did you tell Mr. Foote of it?

A. Don't know that we did.

Q. You have no recollection of that, have you?

A. Don't know whether we did or not; no, sir.

Q. You settled with McLaren on the 20th day of April?

519 A. Yes, sir; I think that is the date.

Q. On the 20th of April, and before Foote had ordered this May lard sold out, you rung up that contract with McLaren?

A. Yes, sir.

Q. Settled it off?

A. Yes, sir.

Q. And, therefore, when you settled with McLaren you had no lard bought of McLaren, did you?

A. No, sir.

Q. Was any lard bought of anybody else for May delivery at the same price?

A. Not at the same price; we had bought of C. Counselman——

Q. You say you didn't have any lard bought then for May at $14 a hundred pounds?

A. Don't know; we might have had a dozen contracts at that price.

Q. Did you?

A. Couldn't tell without looking the books up to see whether we had any lard bought exactly at that price.

Q. You say you settled it on the 20th of April, that lard you bought for Mr. Foote of McLaren, so you had none bought of McLaren?

A. No, sir.

Q. Did you notify Mr. Foote that you had settled that off?

A. Not that I recollect of.

Q. Don't you know you didn't do it?

A. I presume we didn't.

520 Q. Did you ever notify him of any such transaction?

A. When we substituted that contract for this other firm by settling the original one at the same price it would be the same as it would be with Richards to McLaren.

Q. You didn't substitute any contract at the same price?

A. No; the contract was 7½ cents difference.

Q. You say you substituted one of Counselman. Let us see the Counselman contract.

A. Contract with Counselman, $14.07½.

Q. On March 23rd, 1876, you bought of Charles Counselman 250 tierces lard, did you, at $14.07½ a hundred pounds, for a customer of yours by the name of R. A. Templeton?

A. Yes, sir.

Q. That is the fact?

A. Yes, sir.

Q. Who was R. A. Templeton?

A. A customer of theirs.

Q. Where did he live?

A. He lived, I think, in Fairfield, Iowa.

Q. You bought that lard for his account?

A. Yes, sir.

Q. When did Templeton order you to sell it?

A. Sold on April 20th; don't know when the order was given.

Q. On April 20th Templeton told you to sell that?

A. Yes, sir.

Q. And you sold to Joseph Jones & Son?

521 A. Yes, sir.

Q. You bought it for $14.07½ and sold it for $13.10 a hundred pounds?

A. Yes, sir.

Q. And Mr. Foote had no connection whatever with that, did he?

A. No, sir; not at that time.

Q. You bought and sold for Mr. Templeton?

A. Yes, sir.

Q. And you charged up the loss on that to Templeton?

A. Yes, sir.

Q. Is there anything upon your books to show that you substituted that contract for Foote?

A. The books show that we settled the sale to Templeton and substituted this Counselman in place of it on the date as I stated before.

Q. Did you put down the lard you bought for Templeton of Charles Counselman to Mr. Foote's account on that option book anywhere?

A. Made no entry with Foote's name here in regard to that contract.

Q. Do you remember anything about the transaction?

A. Couldn't remember as to this special contract.

Q. Do you remember?

A. No.

Q. Have you the slightest recollection about this 250 tierces of lard you bought of Counselman?

522 A. I hav'n't, only as this recalls to my mind the transaction.

Q. Does it call to your mind so you remember the identical transaction?

A. No.

Q. Not at all?

A. No.

Q. All you know is what you see there on the book, isn't it?

A. Yes, sir; as far as that transaction is concerned.

Q. After you settled off this 250 tierces of lard you bought of Richards—rung it up—you didn't put down in your option book another 250 tierces bought of Counselman, did you?

A. No; we already had that bought of him.

Q. Did you say anything whatever to Mr. Foote about it?

A. Couldn't say whether we did or not.

Q. Do you think you did?

A. I don't think that we did.

Q. From the course of business what do you think about it?

A. From the course of business I don't think he was notified that we had substituted this contract for the other.

Q. You say you substituted this contract for the other. How did you settle off that contract with Counselman?

A. Settled on a contract——

Q. When did you settle it?

A. April 22nd.

Q. How did you settle it?

523 A. This was settled against sale number 1337.

Q. What do you mean? Rung up?

A. Yes, sir.

Q. You rung up that Counselman contract against some one?

A. Yes, sir.

Q. What is the other one you rung it up with?

A. Rung it up against number 1337; substituted Cooley, Dwight & Gillette.

Q. You mean to say that you rung off the Counselman contract. Did you ring it up with the trade you had of Cooley, Dwight & Gillette?

A. No; they were substituted in place of Counselman.

Q. I want to know how you settled the Counselman contract.

A. It must have been settled with this number 1337 sale to W. & J. Rogan.

Q. Do you remember anything about it?

A. Only remember from the margin here.

Q. On the 21st day of April you bought of W. & J. Rogan 250 tierces?

A. Sold to them.

Q. 250 tierces May lard for J. L. Alberger & Company?

A. Yes, sir.

Q. For May delivery?

A. Yes, sir.

Q. Was that lard delivered?

A. I think not.

Q. You think not?

A. I think that was settled.

524 Q. What did Mr. Foote have to do with that sale of lard to Rogan; you didn't sell it for him, did you—for Mr. Foote?

A. No.

Q. You didn't buy it for him, did you?

A. No.

Q. He had no relation or connection with that transaction, did he?

A. So far as the original contract was concerned he didn't have.

Q. The fact is, isn't it, that on March 20th you bought of Cooley, Dewight & Gillette 250 tierces of May lard for a customer of yours by the name of Alberger?

A. Yes, sir.

Q. And the fact is that before the time of delivery—April 21st—you sold that lard to W. & J. Rogan for the account of Alberger?

A. Yes, sir.

Q. And that is all there is to that transaction?

A. This transaction was substituted——

Q. How do you know it was substituted?

A. I know by these red-ink entries that I have made here of the time of settlement.

Q. Is the word "substituted" used in red ink anywhere in that book?

A. No, sir.

Q. Or any such thing as substituted?

A. It shows that this transaction is offset against the other one. If we settle up this purchase here and I make an entry to show that that is settled with another sale——

525 Q. Read your entry—the red-ink entry.

By Mr. RIDDLE: Finish your answer, Mr. Norton.

By Mr. BISBEE: Will you please read the red-ink entries where you bought of Cooley, Dwight & Gillette, for the account of Alberger, 250 tierces May lard?

A. This shows the final settlement——

Q. No; read the entry.

A. Settled April 27th, number 350.

Q. That is all there is in the entry?

A. That is all there is there. It shows there in red ink that this contract was settled.

Q. I haven't asked you that. You have read all there is there in red ink, haven't you?

A. Yes, sir.

Q. Everything?

A. Yes, sir.

Q. Now, does it show anything more than what you have read?

A. No, sir.

Q. Now, then, it means that you offset that trade, don't it, with number 350?

A. Yes, sir.

Q. That you cancelled the contract?

A. Yes, sir.

Q. Wiped it out by putting it against the trade 350; that is what it means?

A. Yes, sir.

Q. In board-of-trade language, you rung it up?

A. Yes, sir.

Q. And that was the end of the contract, wasn't it?

526 A. Yes, sir.

Q. Now, is there anything else in that entry in red ink or black ink in any way to show a substitution for the account of Ira Foote; if so, what is it?

A. There is no substitution of this for any other account. This account was all settled—rung up with another.

Q. That was the end of the transaction?

A. Yes, sir.

Q. No delivery?

A. No.

Q. Have you got in the entire option book before you in red or black ink the word substituted?

A. Not that I remember of.

Q. Did you ever see it on a book in you- life?

A. Yes, sir.
Q. Where?
A. I have seen it in a book, because I have it on my own.
Q. When did you commence putting it on?
A. A long time ago.
Q. How long?
A. I don't know; have used the words "to substitute" or transfer. I have used both those words.
Q. Is the word substitute on the entire book of S. G. Hooker & Company's from the beginning of the business to the end?
A. Not that I remember of.
527 Q. You never saw it on one of them in red or black ink?
A. Not that I know of.
Q. Isn't it true in all the transactions in the trading of S. G. Hooker & Company the entries are substantially the same as they are on Exhibit O in red ink in the margin? Isn't that the form of all the entries?
A. It is, so far as these that I have examined.
Q. Isn't it so far as all you hav-n't examined?
A. As far as my recollection goes.
Q. That is the way the book is kept?
A. Yes, sir.
Q. Isn't it the same?
A. Yes, sir.
Q. Cash means delivery, don't it?
A. Yes, sir.
Q. And when it says settled, and then gives the date of the month of settlement and the number of the transaction, it means rung up or settled directly with that transaction?
A. It shows with what contract the purchase was settled.
Q. That is what it means?
A. Yes, sir.
Q. And that is what it is put there for?
A. Yes, sir.
Q. And that is the significance of it?
A. It shows that I had settled this contract with another purchase. This is left open.

By agreement of counsel, the taking of further testimony is adjourned to Monday, May 3rd, 1886, at 2 o'clock p. m.

528 MAY 29TH, 1886.

Counsel present as before.

Cross-examination of JAMES B. NORTON continued by Mr. BISBEE:

Q. Is the trade number 1345 in Exhibit O, now shown you, an exact copy of the option book of S. G. Hooker & Company in relation to that trade?
A. It is, so far as I can see.

Q. Well, look at it and see if it is both the purchase and the sale.
A. I don't see any difference in it.
Q. Then it is a copy, is it?
A. Yes, sir.
Q. And it is the only entry, isn't it, upon the option book of S. G. Hooker & Company in relation to that trade?
A. Yes, sir.
Q. Now, then, in that particular transaction on the 25th day of April S. G. Hooker & Company bought 250 tierces of lard—June lard—of A. Geddes, at $13.42½ a hundred pounds?
A. Yes, sir.
Q. And that was for delivery in June, wasn't it?
A. Yes, sir.
Q. On the second of May they sold that lard to J. K. Fisher & Company, did they not?
A. Yes, sir.
529 *A. Yes, sir.*
Q. At $12.37½ a hundred pounds?
A. Yes, sir.
Q. Now, it is true, isn't it, that the purchase of that lard of A. Geddes was settled off on the 27th day of April?
A. Yes, sir.
Q. Before the lard was sold to J. K. Fisher & Company?
A. Yes, sir.
Q. And the sale of the lard to J. K. Fisher & Company was settled off on the first day of May, wasn't it?
A According to that, if those figures are right, yes, sir. I can't see what that trade is; it might be the same day the transaction was made.
Q. It was not made till May 2nd. Now, then, Mr. Foote was charged the difference, was he not, between $12.37½ and $13.42½ a hundred pounds, besides being charged with commission?
A. Yes, sir.
Q. That is the way the trade went on the ledger account against Ira Foote?
A. Yes, sir.
Q. That is all the entry you have got in your option book in relation to that transaction?
A. In regard to Ira Foote?
Q. In relation to the purchase and sale of this 250 tierces of lard?
A. We have another——
530 Q. I want an answer to my question. Have you any other entry on your option book with relation to the purchase of this 250 tierces of lard for Ira Foote and in relation to the sale of it?
A. It shows that this was settled up——
Q. No. Answer my question; say yes or no.
A. Well, we have another entry that settled with this transaction; that is all.
Q. Answer my question: Have you any other entry on your option book in relation to Ira Foote, in relation to the purchase of this lard and the sale of this lard?

A. Not with Ira Foote's name to it; no.

Q. Do you remember this transaction, Mr. Norton?

A. Not that particular transaction.

Q. Have you any independent recollection of the purchase of this identical lard and the sale of this identical lard?

A. No, sir; couldn't remember that far back.

Q. You don't remember, as a matter of fact?

A. No, sir; I would have to refer to the books.

Q. So that all you know about it is by referring to the book, isn't it?

A. Yes, sir.

Q. Now, as to the sale of that lard, where it shows it was settled May first, that must have been a mistake in the books?

A. I should think it would be an error; should be the 2nd.

Q. It couldn't have been settled before it was sold?

A. No, sir. That would be a clerical error, I should think, if that is me-nt for a 1; might be a 6.

531 Q. Couldn't be the 6th.

A. Any settlement made on the first of the month, the entry might be made simply from recollection—say May 1st, when we know settlements are made at that time oftener than any other time, and stated there from memory. There is probably an error, if that is me-nt for the 1st.

Q. You have no recollection about any substitution of trades in that matter, have you?

A. Not as far as this is concerned.

Q. None whatever?

A. Only so far as I can refresh my memory from this and show what trades these transactions were settled with—for instance, this purchase——

Q. I want to ask this question: Did Ira Foote, so far as this 250 tierces of lard was concerned, give any order or have anything to do, excepting to buy that lard—for you to buy it of Geddes on the 25th day of April, June lard, and for you to sell it on the 2nd day of May, before the time of delivery?

A. He gave no other instructions.

Q. And you settled of- that purchase that you made for his account before you sold the lard, didn't you?

A. Yes, we settled the lard; I can tell by the numbers here, having another contract in place of it.

532 Q. How do you know you had another contract in the place of it?

A. Because we did; the firm never had any contracts only for their customers.

Q. That is, you know that fact?

A. I know that fact. Never made any trades on their own account as a firm.

Q. They made trades for S. G. Hooker, didn't they?

A. Might have made; yes, sir; I think they did.

Q. And for Mrs. Hooker?

A. I think they did, one for her.

Q. Only one?

A. That is all I recollect of; might have been others; but the firm of S. G. Hooker and Company never made any trades that I remember.

Q. Now, then, have you any recollection of ever substituting a trade for a man in your life, Mr. Norton?

A. Well, we always substituted a trade if we settled it with some other one.

Q. Where did you put it?

A. This number shows; this number that we put here shows that we had another contract in place of this one; been settled against this.

Q. Show me some other contract you held for Ira Foote.

A. This will show it——

Q. No, point it out on the book.

533 A. There is an error in numbering this book here, and I can't find this identical trade; the number here is intended—for instance, this transaction we settled with 1375, if it is not an error in numbering. The purchase of 1375 would stand open, unsettled, but the sale would be settled.

Q. Yes, I understand; but will you point out to me when you settled off the Foote purchase of 250 tierces of June lard, which you made of A. Geddes on April 25th, which you say you settled off and wiped out on the 27th of April. Now, then, will you point out to me what contract you substituted in its place for Ira Foote?

A. It would be settled with this sale to Jones & Raymond, if that is the one; I think that should be 1372, would leave this contract—that would settle, leaving the contract open.

Q. Give the contract.

A. W. & J. Rogan.

Q. The date.

A. That is the only number I find to correspond with this number. This may be mixed up, though—No. 1372.

Q. Now, Mr. Norton, on the 4th day of April, 1876, you bought for the account of H. M. Seavey, 250 tierces of June lard of W. & J. Rogan for $14.02\frac{1}{2}$ a hundred pounds?

534 A. Yes, sir.

Q. And on the 29th day of April you settled that contract off, didn't you?

A. Yes, sir.

Q. You wiped it off before the delivery came around. Now, on the eleventh day of April you sold to G. W. Champlin, for the account of H. M. Seavey, 250 tierces of lard for $13.60?

A. Yes, sir.

Q. And on the same day, the 11th of April, you settled it off, did you?

A. Yes, sir.

Q. Now, then, that was bought and sold for H. M. Seavey, was it, both?

A. Yes, sir.

Q. And Mr. Foote's name didn't appear in it in any way at all?

A. No, sir.

Q. In any form or manner. Mr. Foote gave no orders with reference to it, did he?

A. No, sir.

Q. And had no interest in it in any way?

A. Not that I know of.

Q. Or ever heard of the transaction in his life?

A. Probably not.

Q. In any form or manner. Now, then, do you know anything about this trade for H. M. Seavey except what you see on the option book?

A. No.

535 Q. You have no recollection about it whatever, have you?

A. Only the recollection that we did some business for him.

Q. And further than that you don't know anything about this?

A. No, sir.

Q. And you say that Mr. Foote had no connection with it whatever?

A. No more so than this trade of his, if those numbers are correct; settled with this sale; his purchase settled with this sale.

Q. That is to say, you took this sale that you made on the 11th day of April to George W. Champlin, that you made for H. M. Seavey, and cancelled it, you say, with the purchase that you made for Ira Foote on the 25th of April?

A. That is, if the figures are correct; there may be some error in those figures; there is an error in the book. Those figures are mixed up.

Q. Did you take the purchase that you made for H. M. Seavey on the 4th day of April and settle it with a sale you made for Ira Foote on the 2nd day of May?

A. Might not have been settled with that; might have been settled with some other transaction.

Q. You don't know about that?

A. No, sir.

Q. That is all there is to these two transactions?

536 A. Yes, sir.

Q. That is the whole story, isn't it?

A. Yes, sir.

Q. Did you, on the 29th day of February, 1876, buy of S. D. Foss & Company 250 barrels of March pork for $21.40 a barrel for the account of Ira Foote?

A. Yes, sir.

Q. And did you, on the first day of March, settel off that trade?

A. The property was delivered.

Q. On that day?

A. On the first day of March.

Q. Did you, on the 4th day of February and before you had bought this pork, on the 4th day of the same month, sell 250 barrels of pork to John L. Hancock, for the account of Ira Foote, at $20.52½ a barrel?

A. Yes, sir.

Q. Did you charge up the difference between what you sold that pork for and what you bought it in at to Ira Foote in his ledger account and with your commission added?

A. Yes, sir.

Q. And Mr. Foote ordered the pork disposed of, did he, before the delivery month arrived?

A. Yes, sir.

Q. And you disposed of it?

A. Yes, sir.

Q. Of his contract. That is the fact, isn't it?

537 A. Yes, sir; his contract; a little different from others.

Q. Will you answer what I ask you? That is all; and that was all there was to the transaction, what I have stated, isn't it?

A. Yes, sir.

Q. That is the whole story. There is no other entry upon your option book with relation to that transaction excepting what I have called out of you on cross-examination, is there?

A. Excepting where they have reference to other contracts that have been settled against either the purchase or sale.

Q. Well, what other contract had this transaction settled against any purchase or sale?

A. This sale was settled before the delivery with contract 450.

Q. This sale was?

A. Yes, sir; then on the 1st of March the property was delivered cash and delivered out on some other contract.

Q. That was after Foote got through trading in the article?

A. Yes, sir.

Q. Did Mr. Foote have any connection with that transaction at all after the 29th of February?

A. March 2nd the account was rendered him.

Q. I am asking you if it was not bought for his account

538 on the 29th of February before the delivery month arrived.

A. Yes, sir.

Q. And so far as he is concerned that is the end of it for him?

A. Yes, sir; the sale was made first February 4th and purchased February 29th afterward. The pork was bought in.

Q. At a loss to Mr. Foote?

A. Yes, sir.

Q. And he was charged with the difference between the selling price and the purchase price?

A. On March 2nd.

Q. Never was any pork delivered to Mr. Foote, was there?

A. Not on that transaction.

Direct examination resumed by Mr. RIDDLE in regard to the purchase of wheat and corn and other grain, if any:

Q. Look at those two papers, Mr. Norton, and state if you know what they purport to be and to show, and what the figures and words contained on those papers indicate, if anything.

A. They are copies of this book, so far as I have examined them. I haven't been through every item, but I went through a great many

of them and found them to be copies of the trades on this option book.

539 Q. Do they show, so far as you know, the true state of the transactions had by the firm of S. G. Hooker & Company for the account of Ira Foote, as shown by the books kept by S. G. Hooker & Company?

A. Yes, sir.

Q. What in fact do they show, then, Mr. Norton, in regard to the purchase and sale of grain?

A. They show purchases and sales of corn and wheat.

Q. Do they show anything else—settlements?

A. And settlements made of those contracts.

Q. Do they show anything in regard to the substitution of contracts, one for another, in regard to the purchases and sales made for the account of Ira Foote?

A. They give the names of parties that were substituted or offset when a purchase or sale was settled up; show how the settlements were made, so far as I have been over them.

By Mr. RIDDLE: The statements referred to are offered in evidence as Defendants' Exhibit- Wheat and Corn.

Q. You kept the books, did you, from which those statements were made?

A. Yes, sir; so far as I have noticed. I had an assistant bookkeeper, but I don't — that he was doing anything at this time. I have forgotten. I think it was later on. These transactions are in my handwriting here.

540 Cross-examination.

By Mr. BISBEE:

Q. Do you say, Mr. Norton, that the two exhibits you have just spoken of, marked Exhibit Wheat and Exhibit Corn, are copies of your option book?

A. Yes, sir; so far as I have examined. I haven't in every instance. So far as I have examined them they show——

Q. Will you point out one single trade in either of those exhibits that is a copy of your option book?

A. The first transaction is wheat, number 508.

Q. You say that is a copy?

A. It is not a copy in the same form.

Q. That is what I am asking you—if it is a copy.

A. No, sir; not an exact copy.

Q. Is either of these exhibits a copy?

A. Not in the same form; no, sir.

Q. Now, will you look at Exhibit O, offered here in evidence by the complainant in the cross-bill, with the exception of pages 1 and 2, and state whether that is an exact copy of your option book of all the trades made for the account of Ira Foote by S. G. Hooker & Company?

By Mr. RIDDLE: The question implies that the witness has exam-

ined and compared Exhibit O with the books kept by the
541 firm of S. G. Hooker & Company in such a way that he can swear that every transaction set out in Exhibit O is a literal copy, verbatim ad literatim, figures and everything, from the books of S. G. Hooker & Company, and unless he has done that he can't swear except as to his belief that it is a copy. If you want him to answer that question literally he has got to go through it.

By Mr. BISBEE: Yes; I want an answer to the question as we go along, because that is what I am going to ask him about.

A. I have gone over a portion of it, and as far as I find it is an exact copy except some clerical errors.

Q. And if, upon further examination, you find it is not an exact copy you will put it in your evidence, will you, further along?

A. Yes, sir.

Q. Who made the Exhibits Wheat and Corn?

A. Well, I did know his name, but I can't recall it.

Q. Did you make them?

A. I did not.

Q. Did you have anything to do with making them?

A. No, sir.

Q. Were you present when they were made?

542 A. No, sir.

Q. Were they made by a young man by the name of Arthur Driggs?

A. I suppose so; all I know is what I was told; I am not sure about the name.

Q. They were made by him?

A. I was told they were; yes, sir; I don't know the man.

Q. You had nothing to do with making them at all?

A. No, sir.

Q. Now, it is true, isn't it, that they are not copies from the option book?

A. They were copied from the option book, but are not exact copies in form.

Q. That is, they were made up from the option book, but they are not exact copies?

A. The prices and parties' names bought of and sold to, and the prices, are supposed to be exact copies, so far as I have read.

Q. And the red-ink number of the transaction?

A. Yes, sir.

Q. That is supposed to be a copy?

A. Yes, sir.

Q. Have you any recollection in relation to the trades appearing upon Exhibit Wheat excepting such as comes from your option book?

A. No; only in a general way.

Q. You don't remember any details?

543 A. I couldn't remember the details.

Q. Turn in your option book to number 508. Was the wheat mentioned in that trade bought or sold first?

A. It was bought first.
Q. It was bought before it was sold?
A. Yes, sir.
Q. How do you know.
A. The date shows it; it was purchased December 14th and sold December 22nd.
Q. Now, on the 14th day of December, did you buy for Ira Foote 5,000 bushels of wheat for February delivery, of Nichols, Helmer & Company, at 89⅞ cents a bushel?
A. Yes, sir.
Q. And did you sell that wheat for Mr. Foote on the 22nd of December?
A. Yes, sir.
Q. For 92 cents a bushel?
A. Yes, sir.
Q. And you credited Mr. Foote in his account, did you, with the difference between 89⅞ cents and 92 cents a bushel, less the commission?
A. Yes, sir.
Q. And that is all there was to the transaction in relation to Ira Foote, was it?
A. Yes, sir.
Q. Is there any other entry upon your option book in relation to it?
A. Shows that the account——
Q. No; upon your option book.
544 A. This is the option book; account was rendered January 18th.
Q. And the account was rendered Mr. Foote?
A. Yes, sir.
Q. That is, an account was rendered showing his profit, being the difference between the prices I have named?
A. Yes, sir.
Q. And there is no other entry upon your option book in relation to that transaction, is there?
A. No, sir.
Q. After you had sold out this wheat on the 22nd of December for Ira Foote you cancelled of- the purchase of December 29th, did you, without any delivery?
A. Yes, sir.
Q. And also on the next day after you made the sale of this wheat to Scranton you cancelled off the sale. Did you on the 23rd of December?
A. Yes, sir.
Q. Look on your option book at account 509. Did you on the 15th day of December buy from D. C. Scranton 5,000 bushels of wheat for delivery the February following at 89½ cents?
A. Yes, sir.
Q. And did you on the 28th of February, the same month, sell the same wheat back to Scranton for the account of Ira Foote?
A. Yes, sir.

545 Q. And you credited Ira Foote, did you, with the difference between 89½ cents and 91¾ cents, less the commissions?

A. Yes, sir.

Q. That was all Ira Foote had to do with that transaction, wasn't it?

A. Yes, sir.

Q. And on the same day that you sold that wheat to Scranton you set off the two trades—the purchase and sale with Scranton—and wiped them of- the books that way?

A. Yes, sir; purchase made of him and sold to him; direct settlement.

Q. And that ended the transaction so far as you were concerned?

A. Yes, sir.

Q. Did you on the 17th day of December, 1874, buy of Spruance, Preston & Company 5,000 bushels of wheat for Ira Foote, to be delivered during the next February at the seller's option, at 88⅞ cents a bushel?

A. Yes, sir.

Q. And did you on the 28th day of December of the same month sell the same wheat for Foote to Nichols & Helmer at 91¾ cents?

A. Yes, sir.

Q. And did you credit on Mr. Foote's account the difference between 88⅞ cents and 91¾ cents, less commission?

A. Yes, sir.

546 Q. And that is all Ira Foote had to do with that transaction?

A. Yes, sir.

Q. Excepting to receive the statement of account?

A. Received statement of account not at the time, but, according to this, February 1st.

Q. Now, then, you settled off this purchase of wheat of Spruance, Preston & Company on January 30th, didn't you?

A. Yes, sir.

Q. Cancelled it with some other trade?

A. Yes, sir.

Q. And you settled off the sale of this wheat to Nichols & Helmer on December 28th by offsetting it against some other trade?

A. Yes, sir; on December 28th it was cancelled with 508.

Q. Mr. Foote had nothing to do with that, did he?

A. No, sir.

Q. Did you, on the 7th day of January, 1875, buy of W. W. Boyington 5,000 bushels of wheat for Ira Foote, at 89¾ cents a bushel?

A. Yes, sir.

Q. And that was February wheat, was it?

A. Yes, sir.

Q. Did you, on the 30th day of January and before the month arrived, sell that wheat for Mr. Foote to George Craig, at 88¼ cents?

A. Yes, sir.

547 Q. And did you charge up to Mr. Foote the difference between 89¾ cents and 88¼, with commission added?

A. Yes, sir.

Q. That is all Mr. Foote had to do with that transaction?

A. The account was not rendered till February 1st.

Q. I am talking about charging.

A. Yes, sir.

Q. That is what you did; and the next day you rendered him an account of it?

A. Yes, sir.

Q. That is all Mr. Foote's connection with the transaction?

A. Yes, sir.

Q. Did you, on the 11th day of January, buy of S. B. Webber, for Ira Foote, 5,000 bushels of wheat for March delivery, at 89¾ cents?

A. Yes, sir.

Q. And did you, before March arrived, to wit, on February 25, sell that same wheat to W. E. McHenry, at 89½ cents a bushel?

A. Yes, sir.

Q. And did you charge Mr. Foote the difference between the purchase price, 89¾ cents, and the selling price, 84½ cents, with commission added?

A. Yes, sir.

Q. And that is all Mr. Foote had to do with that transaction, isn't it?

A. Yes, sir.

548 Q. This purchase of wheat you settled off after Mr. Foote sold out on the 27th of February, did you, by offsetting it against another contract?

A. Yes, sir.

Q. And this sale to W. E. McHenry you also settled off, did you, on the 27th of February, by offsetting it against another contract?

A. I think in this case there was no offset with any other contract. I think these two trades were settled one against the other.

Q. Settled direct?

A. Yes, sir.

Q. How could they settle direct when the purchase was made of Webber and the same made to McHenry?

A. Webber and McHenry might have made a trade that would——

Q. Yes, but did they?

A. I can't say that they did.

Q. You know nothing about that?

A. No, I couldn't tell that, but this shows it was settled.

Q. But as a matter of fact you settled off that purchase and sale in the way I have said?

A. No; this shows that we settled one of those against the other, and not against another contract, in that instance.

Q. But they were settled off?

549 A. Yes, sir.

Q. Offset against some trade, no matter where?

A. Yes, sir; offset against each other.

Q. Did you, on the 30th day of January, buy for Mr. Foote 5,000 bushels of April wheat of George Craig, at 90½ cents a bushel?

A. Yes, sir.

Q. When did you buy that wheat in?

A. It was a purchase.

Q. I know it. When did you buy it in?

A. If we bought 5,000 bushels of wheat we couldn't buy it in——

Q. When did you sell it out, in fact, for Mr. Foote?

A. There is no date here to that transaction, showing when it was sold.

Q. Did you ever sell it?

A. I suppose we did.

Q. Do you know anything about it?

A. I haven't any recollection, only that he had some trades at one time that we closed out at the time.

Q. Does your option book show that wheat was ever sold out?

A. It don't. The wheat was evidently sold.

Q. Do you know anything about it?

A. I don't know. I couldn't tell when it was sold.

Q. You don't know whether it was ever sold or not, do you?

A. No, sir.

Q. Did that wheat make a profit or a loss to Mr. Foote?

550 A. Made a profit, I should think, from this memorandum.

Q. How much?

A. Here is a memorandum here saying, "reported sold to Foote 93¾". If it was purchased at 90½ there would be a difference.

Q. I hand you a copy of the ledger account of S. G. Hooker & Company with Ira Foote, at the top of which is printed Exhibits C and D. Now, point out the credit on that transaction for Mr. Foote.

A. There is no single entry here that I see would correspond with that amount. It might be in one of those 10,000 lots that he is credited with.

Q. Upon examination of the ledger account you can't see where Mr. Foote ever got any credit for that wheat, can you?

A. I can see the one April 1st. He was credited again on April 5th.

Q. Was not that account, according to your book, rendered April 2nd?

A. Yes, sir.

Q. Is there any credit to Mr. Foote on that ledger account of April 2nd?

A. There is not; there might be a difference in that; that might have been entered here and account rendered.

551 Q. What does it mean in pencil on the reverse side of your option ledger where it says reported sold to Foote 93¾?

A. I don't know.

Q. You don't know what it means?

A. I have no recollection of it.

Q. Did you ever sell any wheat to Foote?

A. No.

Q. Never in your life?

A. This is settled by note.

Q. It is; the purchase was settled by note, was it?

A. At the time that they had a settlement with him they made a settlement with him and took his note.

Q. What do you know about it?

A. I have no distinct recollection. I know they made a settlement with him, taking his note, and, of course, closed up all of his transactions.

Q. That was a large note of some $12,000?

A. I forget the amount.

Q. There wouldn't be any $12,000 involved in this transaction?

A. No. His whole account was settled, and I presume this was at that time. I couldn't tell what that me-nt there.

Q. I want to know what you know about it.

A. I don't know.

552 Q. The note you speak of is this one on Exhibit C, "We hold your note, dated May 27th, 1875, for $12,753.20." That is what you mean by this note, isn't it?

A. That couldn't be the note, because this is before the 1st of April.

Q. But the note you have just spoken of, this is it?

A. I suppose it is.

Q. So, then, so far as you are able to state, you made a purchase of 5,000 wheat of Craig at 90½ cents. That is all you know about the transaction?

A. Yes, sir.

Q. Did you, on the first day of February, buy of Lyon, Lester & Company 5,000 bushels of wheat for Ira Foote, known as seller April, at 90 cents a bushel?

A. Yes, sir.

Q. Did you, on the 16th of April, sell that wheat to Mr. Foote, to Cooley, Dwight & Gillette, at 94¾ cents?

A. March 16th.

Q. I mean March 16th.

A. Yes, sir.

Q. And you credited Mr. Foote, did you, with the difference between 90 cents and 94¾ cents, less commissions, in that transaction?

A. Yes, sir.

Q. That is all Mr. Foote had to do with it, isn't it?

A. Yes, sir.

553 Q. You settled that purchase with a sale direct, didn't you?

A. Yes, sir.

Q. And wiped it off the books that way?

A. Yes, sir.

Q. Did you on the 4th of February buy of P. S. Miller 5,000 wheat for April, at 80⅝ cents a bushel?

A. Yes, sir.

Q. And did you sell that wheat on March 16th—that same wheat—at 94¾ to Cooley, Dwight & Gillette?

A. Yes, sir.

Q. Did you get rid of the purchase of that wheat on February 18th by offsetting it against a sale you had made for another party?

A. Yes, sir.

Q. Did you get rid of that sale to Cooley, Dwight & Gillette by offsetting it on the 16th of March against another trade?

A. Yes, sir; 591.

Q. And the getting rid of these two trades was made after Mr. Foote ceased to have any interest in the trade, wasn't it?

A. Yes, sir.

Q. Did you on the 5th of February buy 5,000 wheat of A. K. Heold for April at 88⅜ cents a bushel?

A. Yes, sir.

554 Q. And did you on the 16th of March sell that April wheat to F. Camblas at 94½ cents a bushel?

A. Yes, sir.

Q. And you simply credited up the difference to Mr. Foote between 88⅜ cents and 94½ cents, less the commission?

A. Yes, sir.

Q. That is all Mr. Foote had to do with that transaction, isn't it?

A. Yes, sir.

Q. And you got rid of that purchase, did you, on February 5th, the same day you made the purchase, by offsetting it against a sale you had made?

A. Yes, sir.

Q. And did you get rid of that sale on March 18th, two days after you sold it, by offsetting it against a purchase you had made?

A. Yes, sir.

Q. That is all there is to that transaction, isn't it?

A. Yes, sir.

Q. Did you on the 6th of February buy 5,000 wheat for May option at 91⅞ cents for Foote?

A. Yes, sir.

Q. And did you sell that same wheat on the 6th of April to Lyon, Lester & Company at $1.02⅞?

A. Yes, sir.

555 Q. And credited Mr. Foote with the difference between 91⅞ and $1.02⅞, less commission?

A. Yes, sir.

Q. That is all Mr. Foote had to do with that transaction, isn't it?

A. Yes, sir.

Q. And you got rid of that purchase, didn't you, on the 20th of April by offsetting it against a sale you had made?

A. Yes.

Q. And did you get rid of the sale of this wheat on April 17th by offsetting it against a purchase you had made for another customer?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Did you, on February 8th, 1875, buy 5,000 wheat of C. T. Wheeler & Company for seller May, at 91⅜?

A. Yes.

Q. And did you, on the 6th of April, sell the same wheat, May wheat, to Lyon, Lester & Company at $1.03 a bushel?

A. Yes.

Q. And did you credit Mr. Foote with the difference between 91⅜ cents and $1.03, less commission?

A. Yes, sir.

Q. And that is all Mr. Foote had to do with that transaction, isn't it?

A. Yes, sir.

556 Q. Did you get rid of that purchase of May wheat on March 30th by offsetting it against a sale you had — for another customer?

A. Yes, sir.

Q. And you got rid of that sale of May wheat to Lyon, Lester & Company on the 7th of April, next day after you made the sale, by offsetting it against a purchase you had made for another customer?

A. Yes, sir.

Q. That is all there was to that transaction, was it?

A. Yes, sir.

Q. Did you, on the 20th of March, buy for Mr. Foote 5,000 April wheat of W. P. McLaren & Company, at 95 cents a bushel?

A. Yes, sir.

Q. Did you settle of- that purchase on March 22nd by offsetting it against a sale you had made for another customer?

A. Yes, sir; settled against 566.

Q. And did you, on the 1st of April, sell for Mr. Foote 5,000 wheat at 94⅜ cents a bushel?

A. Yes, sir.

Q. And did you charge up to Mr. Foote the difference between 95 and 94⅜ cents, with commission added?

A. Yes, sir.

557 Q. And that is all Mr. Foote had to do with that transaction, isn't it?

A. Yes, sir.

Q. Did you on the 22nd day of March buy for Mr. Foote of Isaac Myers at 94 cents a bushel?

A. Yes, sir.

Q. That was April wheat, was it?

A. Yes, sir.

Q. Did you on March 26th settle off that contract of purchase by offsetting it against a sale you had made for another customer?

A. Yes, sir.

Q. No. 561?

A. Yes.

Q. And did you on the 1st day of April sell for Mr. Foote this same wheat at 94⅜ cents?

A. Yes, sir.

Q. And you credited Mr. Foote, did you, the difference between 94 and 94⅜ cents, less commission?

A. Yes.

Q. That is all Mr. Foote had to do with that transaction, isn't it?

A. Yes, sir.

Q. Did you on the 22nd day of March, same day, buy of W. Northrup & Company 5,000 April wheat at 93 cents?

A. Yes, sir.

Q. And did you on the next day, March 23rd, settle off that contract of purchase by offsetting it against a sale you had made
558 for another customer?

A. Yes, sir; number 584.

Q. And did you on the 31st of March sell that wheat for the account of Ira Foote to M. C. Baker at 93⅜ cents?

A. Yes, sir. These last three transactions are a little different, because the sales were settled by delivering cash wheat?

Q. But not the cash you purchased for it?

A. No.

Q. Now, then, that is all Mr. Foote had to do with that transaction, wasn't it, to be credited with the difference between 93 and 93⅜ cents?

A. Yes, sir.

Q. That is all there was to it, less the commission?

A. Yes, sir.

The taking of further testimony will be resumed on Monday, May 31st, 1886, at 10 o'clock a. m.

559 MAY 31ST, 1886.

Cross-examination of JAMES B. NORTON continued by Mr. BISBEE:

Q. Did you, on the 31st day of March, 1875, buy 5,000 wheat, seller May, of N. C. Baker, at 98⅛ cents a bushel, for Ira Foote?

A. Yes, sir.

Q. Did you, on the 7th day of April of the same year and before the delivery month arrived, settle off that purchase by offsetting it against contract of sale known as number 599?

A. Yes, sir.

Q. Did you, on the 8th day of April, sell that wheat to C. Gerstenberg at $1.07¾ *cents* a bushel?

A. Yes, sir.

Q. And that was for delivery in May, was it?

A. Yes, sir.

Q. And did you settle off that sale made to Gerstenberg on the 22nd of April, before the delivery month arrived, by offsetting it against a purchase known as number 655?

A. Yes, sir.

Q. Now, then, after you had sold that wheat to Gerstenberg on the 8th of April that ended Mr. Foote's connection with that transaction, did it?

A. Yes, sir; the account was rendered him afterwards, May 3.

Q. But, so far as he is concerned, it ended his interest in the trade, didn't it?

A. Yes, sir.

Q. And you credited him with the difference, did you, between 98⅛ and $1.07¾, less the commission?

A. Yes, sir.

Q. Did you, on the 1st day of April, buy for Mr. Foote 5,000 wheat for May delivery from William Young & Company at 99 cents a bushel?

A. Yes, sir.

Q. And on the 8th day of April and before May arrived did you sell that wheat to T. H. Seymour & Company at $1.07\frac{5}{8}$ a bushel?

A. Yes, sir.

Q. And that ended Mr. Foote's connection with that operation, did it?

A. Yes, sir.

560 Q. And did you credit Mr. Foote in that operation the difference between 99 cents and $1.07\frac{5}{8}$, less commission?

A. Yes, sir.

Q. Did you on the 1st day of April buy for Mr. Foote another 5,000 bushels for May delivery of William Young & Company at 99 cents a bushel?

A. Yes, sir.

Q. And did you on the 4th day of April settle off that purchase by offsetting it against a sale made known as 628?

A. Yes, sir.

Q. Then did you on the 8th of April sell 5,000 wheat to Davis & Myers for Mr. Foote at $1.08\frac{1}{4}$ a bushel?

A. Yes, sir.

Q. And did you on the same day that you sold that wheat, April 8th, settle it, offsetting it against a purchase made known as number 628?

A. Yes, sir.

Q. And in that transaction on the 8th of April Mr. Foote's interest ceased in the contract, the purchase, and sale, did it?

A. The account was not rendered to him.

Q. Well, but did his interest cease? Answer that question.

A. As far as the transaction is concerned.

Q. His interest ceased in it, did it?

A. Yes, sir.

Q. And did you credit the difference between 99 cents and $1.08\frac{1}{4}$ a bushel in that transaction, less commission?

A. Yes, sir. This is not credited on that day.

Q. But did you credit him? I am not asking the date.

A. Yes, sir.

Q. And that is all there is, so far as Mr. Foote is concerned, in that transaction, isn't it?

A. Yes, sir.

Q. Now, then, on the 7th of April did you buy 5,000 bushels of wheat of Lyon, Lester & Company at $1.03\frac{7}{8}$?

A. Yes, sir.

Q. Who did you buy it for?

A. For the account of Ira Foote.

Q. And who else?

A. And he held it for the account of Hooker.

Q. Foote held it for the account of Hooker?

A. Yes, sir.

561 Q. How do you know?

A. Well, because I see a memorandum here.

Q. State what you know about the transaction; all you remember about it.

A. Well, my recollection of the transaction as it is recorded here would be this: That he made this purchase and was to pay Hooker the profit, if there was any, in the transaction.

Q. You mean by that, do you, that you put this trade down for Mr. Foote, and if there was any profit in it Hooker was to have it? Do you mean that?

A. That is the way it shows for that transaction.

Q. Do you remember?

A. I do now; there was a trade of that sort.

Q. Do you know whether this is the trade or not?

A. I am not positive about this particular trade.

Q. You don't remember?

A. Only that I see this is for the account of Hooker.

Q. What Hooker is it?

A. S. G. Hooker.

Q. The senior member of the firm of S. G. Hooker & Company?

A. Yes, sir. This may be a trade that was afterwards transferred to his wife. I can't tell as to that. I know there was a trade made for Mrs. Hooker.

Q. In this trade, then, Mr. Foote was to pay commissions, and if any profit was made on it Hooker was to have it, was he?

A. I don't know about the commission; don't think they charged——

Q. If there was any profit on this trade Hooker was to have it?

A. Yes, sir.

Q. If there was any loss Foote was to sustain it; was that it?

A. I suppose so; yes.

Q. That was the understanding, was it?

A. This might have been put down afterwards, giving that trade to Hooker after the profit had been made on it. I can't recall that.

Q. Did Mr. Foote or did he not order that 5,000 — wheat purchased?

562 A. I think he did; yes, sir.

Q. You remember, do you, that he did?

A. Yes, sir.

Q. Independent of the books?

A. My recollection is that he did.

Q. You say you bought that on the 7th day of April, did you, of Lyon, Lester & Company at $1.03⅞ a bushel?

A. Yes, sir.

Q. Did you settle off that contract of purchase on the same day?

A. Yes, sir.

Q. You offset that against a sale you had made known as number 577, did you?

A. Yes, sir.

Q. And settled off the purchase that way?
A. Yes, sir.
Q. Did you on the 13th of April claim to sell this wheat to Henry Town at $1.05\frac{3}{8}$?
A. Yes, sir.
Q. And did you on the 20th of April cancel that sale by offsetting it against a purchase you had made known as 576?
A. Yes, sir.
Q. There was a profit in that wheat, was there not—the difference between $1.03\frac{7}{8}$ and $1.05\frac{3}{8}$?
A. Yes, sir.
Q. Who got that profit?
A. Well, as I said before, I don't know but this is the transaction that is credited to Mrs. Hooker or not—Mrs. Hooker or Mr. Hooker.
Q. Did Mr. Foote get it?
A. I think not.
Q. You didn't credit that profit to Mr. Foote?
A. I think not.
Q. You think either Mr. Hooker or Mrs. Hooker got that profit?
A. Yes, sir.
Q. Did you on the 14th day of April buy 5,000 June wheat for Mr. Foote of J. S. Pennington & Company at $1.04\frac{3}{4}$?
A. Yes, sir.
Q. Did you on the 19th day of May and before June arrived settle off that contract of purchase by offsetting it against a sale you had made known as 722?
A. Yes, sir.
Q. Did you on the 27th day of May and before the delivery month arrived sell that wheat for Mr. Foote to J. B. Hoobs & Company at $95\frac{3}{8}$ cents a bushel?
A. Yes, sir.
563 Q. And did you on the next day, May 28th, cancel that sale by offsetting it against a purchase you had made known as 731?
A. Yes, sir.
Q. And that was all Mr. Foote had to do with the transaction, was it?
A. Difference was charged up to him, I suppose.
Q. Did Mr. Foote have any interest in the transaction after May 27th?
A. No, sir.
Q. And did you then charge Mr. Foote with the difference between $1.04\frac{3}{4}$ and $95\frac{3}{8}$ cents a bushel on 5,000 wheat, with the commission added?
A. On the 31st of May?
Q. Well, did you charge him that difference?
A. Yes; you said did I then; not at the time.
Q. But you did on the 31st of May?
A. Yes, sir.

Q. Did you on the 19th day of April buy of A. Poole 5,000 June wheat for Mr. Foote at $1.04⅜ a bushel?

A. Yes, sir.

Q. And did you on the 18th of May and before the delivery month arrived settle off that purchase and cancel it, offsetting it against a sale you had made for another customer known as 720?

A. Yes, sir.

Q. And then did you on the 28th of May and before June arrived sell that wheat for the account of Foote to B. Adams at 92¾ cents a bushel?

A. Yes, sir.

Q. And did you on the 31st of May charge up the difference between $1.04⅜ and 92¾, with commission added, to Ira Foote?

A. Yes, sir.

Q. And that is all the interest he had in that transaction, is it?

A. Yes, sir.

Q. That ended his connection with it?

A. Yes.

Q. Did you on the 20th day of April buy of McCormick, Adams & Company 5,000 June wheat for Mr. Foote at $1.02⅝?

A. Yes.

Q. And did you before the delivery month arrived, namely, on May 21st, cancel off that purchase by offsetting it against a sale you had made for another customer known as 717?

A. Yes.

564 Q. And did you, on the 29th day of May and before June arrived, sell the wheat for Mr. Foote to Robert Warren at 90¼ a bushel?

A. Yes.

Q. And did you charge up, on the 31st of May, to Mr. Foote the difference between $1.02⅝ and 90¼, with commission added?

A. Yes.

Q. That ended Mr. Foote's connection with that transaction?

A. Yes, sir.

Q. Did you, on the 28th day of April, 1875, buy of Henry Town 5,000 June wheat for Mr. Foote at $1.06 a bushel?

A. Yes, sir.

Q. Who did you buy it for?

A. Bought it for Ira Foote, and from the entry made here I should think the profit was paid to Nellie Hooker.

Q. Who is Nellie Hooker?

A. Mr. Hooker's daughter.

Q. Read the entry from which you make that.

A. The entry is made for account of Ira Foote, account of H., and in pencil over here it is written Nellie.

Q. Who did you pay that profit to?

A. Well, I couldn't say. I presume it was paid to Nellie Hooker.

Q. Do you remember anything about the transaction?

A. I couldn't say it was not.

Q. Do you remember?

A. I do remember some trades made there of a similar nature, but I couldn't tell that money was ever paid to Nellie Hooker.

Q. Do you find in red ink in that transaction a check for that profit was made to Mrs. Hooker, don't you?

A. Check to Mrs. H.

Q. Who is Mrs. H.?

A. Mrs. Hooker, I suppose.

Q. Don't you know that they paid to Mrs. Hooker that money?

A. There was some money paid to him. Whether this is the transaction or not I couldn't say.

Q. You say you bought that wheat on April 28th—that is, June wheat. Did you, on May 18th of the same month and before June arrived, settle off that purchase by offsetting it against a sale made, known as 698?

A. Yes.

565 Q. And on April 30th did you sell or claim to sell that wheat to F. P. Erskine at $1.09 a bushel?

A. Yes.

Q. And did you cancel that sale to Erskine on May 1st of the same year by offsetting it against a purchase you had made for a customer, known as 685?

A. Yes.

Q. And that transaction left a profit, which would be the difference between $1.06 and $1.09, less commission?

A. Yes.

Q. On 5,000 bushels of wheat?

A. I presume there is no commission charged in that account.

Q. And that profit—three cents a bushel, $150—you paid to Mrs. Hooker, wife of S. G. Hooker, the senior member of the firm of S. G. Hooker & Company, did you?

A. Yes, sir.

Q. Did you, on the 3rd day of May, 1875, buy of Norton, Son & Company 5,000 June wheat, at $1.07¼ a bushel?

A. Yes.

Q. Did you, on May 22nd, before delivery month arrived, settle off that purchase and cancel the same by offsetting it against a sale made for another customer, known as 715?

A. Yes, sir.

Q. State the meaning of the expression, account Ira Foote, H., in your option book.

A. I should say that meant simply that Mr. Hooker made the purchase.

Q. For his own account?

A. No, sir.

Q. What does it mean—Hooker and G. written right under it? Didn't Geltmacher make that purchase?

A. I guess I am wrong. I think Geltmacher made the purchase.

Q. Don't that mean this: If there was a profit on that transaction Hooker would have got the money?

A. I couldn't say as to that.

Q. Can you say it is not so?

A. I can't; no, sir.

Q. Isn't that your opinion, that it is so?

A. The transaction there as it is shown now, as I see it——

566 By Mr. RIDDLE: I object to his giving his opinion.

Q. What is your judgment in relation to the signification of the word Hooker in your option book, in connection with that transaction?

A. The first impression I had was that Hooker made the trade. Afterwards I saw the initial G, which indicates that Geltmacher made the purchase, and the word Hooker. It don't say for account of Hooker, so I couldn't testify as to whether it is for his account or not, or what that was put there for.

Q. Now, if there was a profit on that transaction, isn't it your best knowledge and belief from the book that Hooker would have taken that profit?

A. He would take anything he could get.

Q. Answer the question one way or the other.

A. I couldn't say if the entry had been for the account of Hooker. I would say yes, but its not being that, and that word Hooker being simply written on there, I wouldn't want to testify that that was the case.

Q. You wouldn't want to testify that was not the case, would you?

A. No, sir; I wouldn't.

Q. Now, then, did you, on the 29th of May and before June arrived, make a sale of a like amount of wheat to R. P. Murphy, at 90¼ cents a bushel?

A. Yes, sir.

Q. And did you settle off that sale of June wheat on May 31st, before June arrived, by offsetting it against a purchase you had made for another customer, known as number 697?

A. Yes, sir.

Q. And did you on the same day, May 31st, charge up to Mr. Foote the loss, being the difference between $1.07¼ and 90¼, with commission added?

A. Yes.

Q. And that is all Mr. Foote had to do with that transaction, isn't it?

A. Yes.

Q. And the loss you say was charged to Mr. Foote?

A. I think so. Yes, sir; account rendered May 31st.

567 Q. Did you, on the 11th day of October, sell short 5,000 bushels of wheat for November to William Young & Company at $1.07 a bushel?

A. Yes.

Q. And did you, 2 days after the short sale, namely, on the 13th day of October, cancel that sale by offsetting it against a purchase made for another customer, known as 897?

A. Yes, sir.

Q. For whose account was that short sale made?

A. Account of H. By that I should say it was Hooker.

Q. S. G. Hooker?

A. Yes, sir

Q. Did you, on the 13th of October, buy in that wheat of Charles Wetherell at $1.07⅞ a bushel?

A. Yes, sir.

Q. And did you, on the 30th day of October, the same month and before November arrived, cancel that purchase by offsetting against a sale made for another customer, known as 917?

A. Yes, sir.

Q. What did you do with that profit?

A. There is a loss, I should say, there.

Q. On the 12th of October did you sell short for Ira Foote to C. A. Mair & Company 5,000 November wheat at $1.09 a bushel?

A. Yes, sir.

Q. Did you, on the next day, say 13th of October, cancel that sale by offsetting it against a purchase made for another customer, known as 883?

A. Yes, sir.

Q. What does the word on your option ledger mean after the words account Ira Foote, "Account H."?

A. I should say it meant Hooker.

Q. What Hooker?

A. S. G. Hooker.

Q. Did you, on the 13th day of October, buy for Ira Foote from W. S. Crosby 5,000 November wheat at $1.07⅞ a bushel?

A. Yes, sir.

Q. Did you, on the 18th day of the same month and before November arrived, cancel that purchase by offsetting it against a sale made for another customer, known as 883?

568 A. Yes, sir; that is a little different. They were both offset against the same number. It might have been Foote's own account; that might be offset some other way.

Q. Was it?

A. I couldn't tell without going back and referring to it. Of course——

Q. Then it was not a purchase and sale made for the account of Ira Foote, was it?

A. No, sir.

Q. Made for another customer both the purchase and sale that you offset this account with?

A. Yes, sir.

Q. Now, there was a profit in that transaction, was there?

A. Yes, sir.

Q. Did you on the 18th of October sell short for Ira Foote 5,000 wheat to Bensleys & Wagner at $1.10 a bushel—November wheat?

A. Yes, sir.

Q. And did you on November 20th cancel that sale by offsetting it against contract of purchase you made for another customer, known as 908?

A. Yes, sir.

Q. Who did you make that short sale for?

A. Ira Foote.

Q. What is the signifi-ance, on your option ledger, of the expression, after the name Ira Foote, "Account Mr. H."?

A. I don't know whether that is Mr. or Mrs. Hooker.

Q. Well, was it made——

A. I should say it is Mr. or Mrs. Hooker; one of the two; couldn't tell from this whether Mr. or Mrs. Hooker.

Q. Did you before November arrived, namely, on the 21st of October, buy in that wheat of W. E. McHenry—November wheat—at $1.07⅞ a bushel?

A. Yes.

Q. And did you on the 25th of October settle off that purchase of McHenry by offsetting it against a sale made for another customer, known as 910?

A. Yes, sir.

Q. Now, take the last three transactions together, all of which show, in your option ledger account of Hooker or Mrs. Hooker, there is a profit in the three trades altogether?

A. Yes, sir.

Q. What did you do with that profit?

569 A. My best recollection is it was paid to Mrs. Hooker; I wouldn't be positive about that—Mr. or Mrs. Hooker; there was some paid to her.

Q. Examine the copy of your ledger account which is an exhibit in this case, under date of November 6th, and state if you find any sum of money credited to Mr. Foote under that date; and, if so, what.

A. I don't find in this account where Mr. Foote has been credited with anything on that date.

Q. Well, that is the date the account was rendered?

A. Yes, sir.

Q. Now, Mr. Norton, will you please state what the profit would be on the last three trades, being short sale of 15,000 November wheat less the commission?

A. $118.75.

Q. Now, looking at your option book and reading the words Hooker account there, and also looking upon your ledger account and seeing no credit to Mr. Foote, state what became of that money.

A. Well, I should say it was paid to either Mr. or Mrs. Hooker.

Q. Did you, on the 20th day of March, 1876, sell for Foote to David Powers 5,000 wheat for $1.08⅜ a bushel?

A. Yes, sir.

Q. Did you, on the next day, March 21st, buy in that May wheat for Mr. Foote, of J. H. Slater, at $1.08⅛?

A. Yes, sir.

Q. Did you credit Mr. Foote with the difference between $1.08⅛ less commission?

A. Yes, sir.

Q. And on April 5th you rendered him an account, did you?

A. Yes, sir.

Q. That ended Mr. Foote's connection with that transaction, did it?

A. Yes, sir.

Q. How did you wipe out that sale?

A. The sale was cancelled on March 28th with number 1054.

Q. Well, 1054 was the purchase you made of H. J. Slater for Mr. Foote, isn't it?

A. That would be that one of those trades was offset against the other.

570 Q. I know; but you sold this wheat to David Powers on the 20th of March?

A. We bought it of Slater on the 21st of March. Slater and Powers might have had a trade, so this purchase would have made a settlement.

Q. Direct settlement?

A. Yes.

Q. And this is your judgment about it—from the looks of your book?

A. Yes, sir.

Q. That that is the way it was done?

A. Yes, sir.

Q. Did you, on the 20th of March, sell for Mr. Foote 5,000 May wheat to David Powers at $1.08⅜ a bushel?

A. Yes, sir.

Q. And did you, on the next day, buy of John Dupee, for Foote, 5,000 bushels May wheat at $1.08?

A. Yes, sir.

Q. And did you, on the 15th of April, cancel that sale by offsetting it against a purchase known as 1079?

A. Yes, sir.

Q. And did you, on the 21st of March, cancel your purchase by offsetting it against a sale, 1053?

A. Yes, sir.

Q. On the 21st of March Mr. Foote's interest ceased in that transaction, did it?

A. Yes; account was not rendered at that time; not till April 5.

Q. But his interest ceased in it just the same?

A. Closed up the trade.

Q. And Mr. Foote was credited with the difference, was he, between $1.08 and $1.08⅜, less commission?

A. Yes, sir.

Q. That is all he had to do with that transaction?

A. Yes, sir.

Q. Did you, on the 20th day of March, 1885, buy for Ira Foote from Gilbert & Brega 5,000 bushels May corn at 72½ cents?

A. Yes.

Q. Did you, on the 24th day of March, sell that May corn to Gilbert & Brega at 76½ cents?

A. Yes.

Q. And *did* you credited Mr. Foote, did you, on May 3rd, the difference between 72½ and 76½ cents, less commission?

A. Yes.

Q. And Mr. Foote's interest in that transaction ceased on
571 the 24th of March, didn't it, although you didn't render an account till May?

A. Trade was closed on the 24th of March.

Q. So far as he was concerned, that ended his connection with it?

A. Yes, sir.

Q. And then you simply cancelled the purchase and the sale direct with Gilbert & Brega?

A. Yes.

Q. And you did that on the same day you sold the corn to Gilbert & Brega?

A. Yes, sir.

Q. Did you on the 20th of March also buy of Wolcott & Goodnow 5,000 May corn at 72⅞ cents?

A. Yes, sir.

Q. And for account of Ira Foote?

A. Yes, sir.

Q. And did you on the 24th of March, 4 days after, sell that corn to D. R. Brearly at 76½ cents?

A. Yes, sir.

Q. That was May corn you sold to Brearly?

A. Yes, sir.

Q. And did that end Mr. Foote's connection with that transaction?

A. Account was not rendered until——

Q. No matter; did it end his connection with it?

A. Closed the trade; yes, sir.

Q. And you credited him with the difference between 72⅞ cents and 76½ cents?

A. Yes, sir.

Q. And he had no interest in that transaction, had he, after March 24th, 1875?

A. He didn't after May 3rd; the account was rendered.

Q. I ask if he did after March 24th, 1875.

A. Might have had in this way, the reason why I qualify my answer. Suppose that either one of those parties had failed before the transaction was settled up, they would have notified him and held him as principal in the matter?

Q. Do you mean to say that the principal's name was not given to Mr. Foote at all?

572 A. Not at the time; no, sir.

Q. Is it customary on the board to give the party's name to the customer of whom you buy or sell articles?

A. Not unless they ask it.

Q. Did you ever make a statement to Mr. Foote showing from whom you bought an article or to whom you sold?

A. No, sir.

Q. Never did? Have you any recollection of his ever knowing the parties from whom you bought or to whom you sold?

A. No; I haven't any recollection.

Q. Isn't it the universal custom on the Chicago Board of Trade

for merchants — the name- of the parties to their customers from whom they buy or to whom they sell?

A. They don't do it, because it is never asked.

Q. Isn't that the custom?

A. Yes, sir.

Q. Isn't i- also the custom for the commission merchants to stand guarantee for his customer?

A. I think that is done very largely now, but at that time they didn't do it.

Q. You mean they didn't in 1875?

A. Some firms did and others did not.

Q. Was it not the custom in 1875?

A. It was not the general custom.

Q. Was it not pretty nearly general?

A. I know they didn't guarantee their trades to their customers at that time.

Q. On the 27th day of March, 1875, did you buy of D. R. Brearly 5,000 May corn at 75⅞ cents for Mr. Foote?

A. Yes.

Q. And did you, on April 27th, cancel that purchase by offsetting it against a sale known as 653?

A. Yes, sir.

Q. Did you before May arrived, namely, on April 28th, sell that corn to D. W. Irwin & Company for Mr. Foote at 75½ cents a bushel?

573 A. Yes, sir.

Q. Did you charge that loss, which was a difference between 75⅞ cents and 75½ cents, to Foote, with commission added thereto?

A. Yes, sir.

Q. And was that all he had to do with the transaction?

A. Yes, sir.

Q. Did you, on March 29th, 1875, buy for Mr. Foote, of Murray, Nelson & Company, 5,000 May corn at 75¾ cents a bushel?

A. Yes.

Q. And did you upon Mr. Foote's order, on April 28th and before May arrived, sell that corn to D. W. Irwin & Company for 75½ cents a bushel?

A. Yes, sir.

Q. Did you charge Mr. Foote the difference between 75¾ cents and 75½ cents, with commission added?

A. Yes, sir.

Q. And that was all Mr. Foote had to do with that transaction, was it?

A. Yes, sir.

Q. Did you, on March 30th, buy of George Gale 5,000 May corn for Mr. Foote at 75½ cents a bushel?

A. Yes, sir.

Q. Did you, on April 29th and before May arrived, sell that corn to G. P. Comstock & Company for 76⅜ cents a bushel?

A. Yes.

Q. And did you credit up to Mr. Foote the difference between 75¼ and 76⅜, less commission?

A. Yes, sir.

Q. And is that all Mr. Foote had to do with that transaction?

A. Yes, sir.

Q. Did you, on April 10th, buy of G. P. Comstock for Ira Foote 5,000 May corn at 78⅜ cents a bushel?

A. Yes, sir.

Q. Did you, on April 29th, cancel off that sale by offsetting it against a sale made for another customer, 630?

A. Yes, sir.

Q. And did you, on April 29th and before May arrived, sell that corn to G. P. Comstock & Company for Mr. Foote at 76⅜?

A. Yes, sir.

Q. Did you charge Mr. Foote the difference between 78⅜
574 and 76⅝, with commission added thereto?

A. Yes, sir.

Q. Was that all Mr. Foote had to do with that transaction?

A. Yes, sir.

Q. Did you on the 29th day of April cancel the purchase and sale made of G. P. Comstock & Company by offsetting them direct—cancel both the purchase and sale?

A. Yes, sir.

Q. Did you on the 10th day of April buy of G. P. Comstock & Company another 5,000 May corn for Foote at 78¾ cents a bushel?

A. Yes.

Q. And did you on the 29th day of April cancel that purchase by offsetting it against a sale made for another customer, 642?

A. Yes.

Q. Did you on the 24th day of May sell for Mr. Foote to Henry Town 5,000 June corn at 67 cents?

A. Yes, sir.

Q. And did you on the next day, May 25th, cancel that sale by offsetting it against a purchase to another customer known as 705?

A. Yes, sir.

Q. Did you charge up Mr. Foote the difference between 78¾ and 67 cents a bushel in that transaction?

A. Yes; and I think there are other charges in there as well as difference and commission. I think the corn was carried and these charges, this says, cash on May 1st.

Q. But you have testified you cancelled the sale?

A. Yes, sir.

Q. Did you on April 10th buy of G. P. Comstock & Company another 5,000 May corn for Foote at 78¾ cents a bushel?

A. Yes, sir.

Q. Did you on May 24th sell to Dugan, Case & Spears 5,000 June corn at 66⅜ cents a bushel?

A. Yes, sir.

Q. And did you cancel that sale on the next day, May 25th, by offsetting it against a purchase made for another party known as 702?

A. Yes, sir.

Q. And did you charge Mr. Foote the difference between 78¾ and 66⅞ cents a bushel on your ledger?

A. Yes, sir.

Q. Did you on April 12th, 1875, buy of Nichols & Helmer
575 another 5,000 May corn at 79 cents?

A. Yes, sir.

Q. You may give it to the reporter just as it appears where you settled off that purchase on your option book.

A. As it appears here, settled April 3rd.

Q. Now, you may state, inasmuch as it could not have been settled after the purchase was made, when, in your judgment, it really should be.

A. I should say it must be April 30th, an error.

Q. You may state if you have looked at account number 608, and ascertain what the date really should be when you did settle.

A. Should be April 30th, settled with 608.

Q. It is true, isn't it, that on April 30th, 1875, you settled that purchase for Mr. Foote by offsetting it against a sale you made for another customer known as 608?

A. Yes, sir.

Q. On the 24th of May your option book shows, does it, that you sold 5,000 June corn for a man by the name of Duncan, the first name not appearing?

A. Yes; I think S. F.

Q. The word Duncan only appears on your ledger?

A. Yes, sir.

Q. For 66⅞ cents a bushel?

A. Yes.

Q. And your book shows also, doesn't it, that on the same day you settled off that sale with Duncan by offsetting it against a purchase you made known as 671?

A. Yes, sir.

Q. And you charged Mr. Foote, did you, the difference between 79 cents and 66⅞ cents?

A. Yes, sir.

Q. And that is all Mr. Foote had to do with that transaction?

A. Yes, sir.

Q. Did you, on the 12th day of April, buy of Cooley, Dwight & Gillette 5,000 more May corn at 78⅞ cents a bushel?

A. Yes, sir.

Q. And did you, on the 20th day of the same month and before May arrived, settle off that purchase by offsetting it against a sale known as 551?

A. Yes, sir.

576 Q. And did you on the 24th day of May sell to Trego & Smith 5,000 June corn at 64½ cents a bushel?

A. Yes.

Q. And did you charge up Mr. Foote the difference between 78⅞ cents and 64½ cents, with the commission added thereto?

A. Yes.

Q. And that is all Mr. Foote had to do with that transaction?

A. In answering the way the question is put there, that wouldn't be charged to him at that time.

Q. Well, it was charged to him June 1st?

A. Yes, sir.

Q. Did you on April 12th buy of S. B. Webber 5,000 May corn at 78¾ cents a bushel?

A. Yes, sir.

Q. And did you on May 24th sell 5,000 June corn to Trego & Smith for Mr. Foote at 64½ cents?

A. Yes, sir.

Q. And what was the ledger entry made in that transaction?

A. June 1st Mr. Foote was charged with the loss and commissions and other charges, if there were any.

Q. Did you on the 12th of April, 1875, buy of G. P. Cpmstock & Company another 5,000 May corn for Mr. Foote at 78⅞ cents a bushel?

A. Yes, sir.

Q. And did you on the 24th of May sell to Lyon, Lester & Compant 5,000 bushels of June corn at 64½ cents a bushel?

A. Yes, sir.

Q. What charge did you make in that transaction?

A. I think these charges were all made in a lump.

Q. For 30,000 bushels?

A. That is the amount, and there would be a loss on the corn—commission and carrying charges.

Q. Did you on the 14th of April buy of S. W. Adams & Compant 5,000 more May corn at 76⅛ cents a bushel?

A. Yes, sir.

Q. And did you on the 29th of the same month sell 5,000 May corn to G. P. Comstock & Company at 76⅝ cents a bushel?

A. Yes, sir.

Q. And did you cancel that sale on the same day that you
577 made it, namely, April 29th, by offsetting it against a purchase for another customer, number 631?

A. Yes, sir.

Q. And did you credit Mr. Foote the difference between 76⅛ cents and 76⅝ cents, less your commission?

A. Yes, sir.

Q. That is all Mr. Foote had to do with that transaction, isn't it?

A. Yes, sir.

Q. Did you, on the 19th day of April, buy of Gilbert & Brega 5,000 bushels June corn at 74 cents, for Mr. Foote?

A. Yes, sir.

Q. Did you, on the 20th day of May, sell that corn to Gilbert & Brega for 68⅝ cents a bushel?

A. Yes, sir.

Q. Did you charge up to Mr. Foote, on the 31st day of May, the difference between 74 cents and 68⅝ cents, with commission added thereto?

A. Yes.

Q. And you settled off the purchase and sale with Gilbert & Brega by offsetting it against the sale direct, did you?

A. Yes, sir.

Q. Did you, on the 28th of April, buy of D. W. Irwin & Company 5,000 June corn for Mr. Foote at 76½ cents a bushel?

A. Yes, sir.

Q. Did you cancel that purchase on May 19th by offsetting it against a sale made for another customer, known as number 552?

A. Yes, sir.

Q. Did you, on May 20th, and before June arrived, sell this corn to R. A. Peters at 69 cents a bushel?

A. Yes, sir.

Q. Did you, on May 31st, charge Mr. Foote the difference between 76½ cents and 69 cents a bushel, with commission added?

A. Yes, sir. I think that is the same as some of those others commission and carrying charges.

Q. Did you, on April 28th, buy of D. W. Irwin & Company 5,000 more bushels of June corn for Mr. Foote at 76½ cents a bushel?

A. Yes, sir.

Q. And did you, on May 24th, settle off that purchase by offsetting it against a sale you had made, 633?

A. Yes, sir.

Q. And did you, on May 20th, and before June arrived, sell this corn to Murray, Nelson & Company at 69 cents?

A. Yes, sir.

578 Q. And did you, on May 31st, charge up to Mr. Foote the difference between 76½ cents and 69 cents, with commission added?

A. Yes. sir.

Q. And that was all Mr. Foote had to do with that transaction?

A. Yes, sir.

Q. Did you, on the 29th of April, buy of G. P. Comstock & Company 5,000 more June corn for Mr. Foote, at 77½ cents a bushel?

A. Yes.

Q. Did you, on the 19th day of May, and before June arrived, settle off that purchase by offsetting it against a sale made known as 555?

A. Yes, sir.

Q. Did you, on the 20th of May, sell that June corn to Murray, Nelson & Company?

A. Yes, sir.

Q. And did you, on the 31st of May, charge up to Mr. Foote the difference between 77½ cents and 69 cents a bushel, with commission added?

A. Yes, sir.

Q. And that ended Mr. Foote's connection with that transaction, did it?

A. Yes, sir.

Q. Did you, on the 29th of April, buy another 5,000 June corn for Mr. Foote of G. P. Comstock & Company, at 77½ cents a bushel?

A. Yes, sir.

Q. And did you cancel that contract of purchase on May 19th by offsetting it against a sale made for another customer, known as 556?

A. I think it is May 19th.

Q. Did you, on the 20th of May, and before June arrived, sell that corn to Murray, Nelson & Company, at 69 cents a bushel?

A. Yes, sir.

Q. Did you, on the 31st day of May—that is, the same May—charge Mr. Foote the difference between 77½ cents and 69 cents, with commission added?

A. Yes, sir.

Q. And that is all Mr. Foote had to do with that transaction, isn't it?

A. Yes, sir.

Q. Did you, on the same day, 29th of April, buy another 5,000 bushels of corn for Mr. Foote of G. P. Comstock & Company, at 77½ cents?

A. Yes, sir.

579 Q. And did you on the 19th of May, and before June arrived, cancel that purchase by offsetting it against a sale made for another customer, known as 554?

A. Yes, sir.

Q. Did you on the 20th of May, and before June arrived, sell that corn to Murray, Nelson & Company at 69 cents a bushels?

A. Yes, sir.

Q. And did you on the 31st of May charge Mr. Foote the difference between 77½ cents a bushel and 69 cents a bushel, with commission added?

A. Yes, sir.

Q. And that ended Mr. Foote's connection with that transaction, didn't it?

A. Yes, sir.

Q. Did you on July — (date not appearing on your option book) buy for Mr. Foote of Davis & Meyers 5000 September corn at 76⅜ cents a bushel?

A. Yes, sir.

Q. And did you on July — (date not appearing on your option book) cancel off that purchase by offsetting it against a sale made for another customer, known as 803?

A. Yes, sir.

Q. You can't give the date of that purchase, can you?

A. I can't give the dates, but I can give the principals of those 2 purchases.

Q. Who were they?

A. One was Ira Foote and the other was Davis & Myers.

Q. You mean to say you bought the corn from Davis & Myers for Ira Foote, but you can't give the date?

A. Yes, sir.

Q. You can't give the date when you settled that contract?

A. It don't appear here; no, sir.

Q. The option book don't show either date?
A. No, sir.
Q. It shows July, but not the day in July?
A. Yes, sir.
Q. Did you on September 1st sell this corn for Mr. Foote to Gilbert & Brega at 63 cents a bushel?
A. Yes, sir.
Q. And did you cancel that sale by offsetting it against a purchase known as 803?
580 A. Yes, sir.
Q. And you charged up Mr. Foote, did you, the difference between 76⅝ cents and 63 cents a bushel, with commission added?
A. Yes, sir.
Q. And that is all Mr. Foote had to do with that transaction?
A. Yes, sir.
Q. Who was the customer that you settled this purchase and sale account with—number 863?
A. Davis & Myers.
Q. Who was the customer?
A. They were the principals in the transaction.
Q. For whom was the corn bought and sold known as account 863?
A. Davis & Myers.
Q. They were the customers?
A. Yes, sir.
Q. Who are Davis & Myers?
A. They were customers of theirs.
Q. Where did they live?
A. At Grinnell, Iowa.
Q. Then Davis & Myers were not members of the Chicago Board of Trade?
A. No.
Q. Then when you put down Davis & Myers you didn't buy any article on the board of trade for Mr. Foote?
A. Not in that sense.
Q. You then did this whenever Davis & Myers' name appears in connection with Mr. Foote's? You had an order from Davis & Myers to sell some corn or buy some corn, did you? Is that correct?
A. As far as this transaction is concerned, it was bought for the account of Mr. Foote of Davis & Myers.
Q. They sent you an order to buy some corn and sell some corn, both, did they?
A. I presume so.
Q. Don't you know they did, from your books here?
A. I should say they did.
Q. Now, then, instead of going on and buying and selling any corn on the Chicago Board of Trade, you put down Davis & Myers' order to sell against Ira Foote's order to buy?
A. I presume in this case that was done.

Q. Didn't you also put down Davis & Myers' order to buy against Foote's order to sell in this transaction? Isn't that correct?

581 A. I don't know as I understand just—put your question again and I will answer it.

Q. You bought for Foote of Davis & Myers 5,000 corn?

A. Yes, sir.

Q. Davis & Myers lived in Grinnell, Iowa?

A. Yes, sir.

Q. Then you had an order from Davis & Myers to sell 5,000 September corn?

A. Yes, sir.

Q. And instead of selling it on the board of trade you put that down as a purchase for Mr. Foote, didn't you?

A. Yes, sir.

Q. Now, isn't that the reason there isn't any date to that transaction, because you didn't buy the corn on the board of trade?

A. I should presume that is the case.

Q. And isn't that the reason there is no date to the settlement here?

A. The sale made against this purchase of Davis & Myers was settled with D. P. Hutchinson in September.

Q. *Was* but the reason that there is no date appearing of the time that this purchase of Davis & Myers was settled up is because you didn't buy this article on the board?

A. I should say in that case that Mr. Foote——

Q. No; answer my question and then explain afterwards.

By agreement the taking of further testimony is adjourned indefinitely.

582 JULY 21ST, 1886.

Counsel present as before.

Cross-examination of JAMES B. NORTON continued by Mr. BISBEE:

Q. Did you, on the 28th of August, 1875, sell short for Ira Foote to W. T. Templeton 5,000 bushels corn for October delivery at 65 and ¾ cents a bushel?

A. Yes, sir.

Q. Did you, on the same day, cancel the sale by offsetting that account against a purchase you had made known as 830?

A. Yes, sir.

Q. Did you, on the 6th of September, buy that corn for Foote of W. H. Underwood & Company at 60½ cents a bushel?

A. Yes, sir.

Q. And did you, on the next day of September 7th, settle off that purchase and cancel the same by offsetting it against a sale known as number 836?

A. Yes, sir.

Q. Did you, on the 28th of August, sell another 5,000 sceler October corn for Ira Foote to J. S. Perrionette & Company at 65 and ¾ cents a bushel?

A. Yes, sir.

Q. Did you, on September 1st, cancel that sale against a pur made for another customer known as 839?

A. Yes, sir.

Q. And did you, on September 6th, buy in that 5,000 Oct corn for Foote's account of J. S. Perrionette & Company for Fo account at 60½ cents a bushel?

A. Yes, sir.

Q. Did you, on the same day, settle off that purchase and ca it by offsetting it against a sale made for another customer, kn as 841?

A. Yes, sir.

Q. Did you likewise, on August 31st, 1875, sell 5,000 seller O ber corn for Ira Foote to P. P. Hutchinson & Company at 63 cen bushel?

A. Yes, sir.

Q. And did you, on the 6th of September, buy in that corn Foote—that October corn—of Bensley & Wagner at 60½ cen bushel?

583 A. Yes, sir.

Q. And did you settle the contract of sale against the c tract of purchase on the 7th day of September, and cancel both p chase and sale?

A. Yes, sir.

Q. Did you on the 9th of September likewise sell 5,000 Octo corn for Foote to G. T. Beebe & Company at 56 and ¾ cent bushel?

A. Yes, sir.

Q. And did you on the 11th of September cancel that contract sale by offsetting it against a purchase you had made for anot customer, known as transaction 857?

A. Yes, sir.

Q. Did you on the 10th of September buy in that October c for Foote of Underwood & Son at 58 and ⅛ cents a bushel?

A. Yes, sir.

Q. And did you on the 15th of September, same month, can that purchase by offsetting it against a sale made for another c tomer, known as transaction 853?

A. Yes, sir.

Q. Did you charge Mr. Foote in his ledger account the differe between 56 and ¾ cents and 58 and ⅛ cents, with commission adde

A. Yes, sir.

Q. That is all there was entered on your books outside of yo option ledger so far as Foote was concerned, was it?

A. Yes, sir.

Q. Did you likewise, on September 9th, sell for Foote 5,000 Oct ber corn to Murray, Nelson & Company at 56 and ⅝ cents a bush

A. Yes, sir.

Q. And did you on September 20th cancel that sale by offsetti it against a purchase for another customer, known as transacti 858?

A. Yes, sir.

Q. Did you likewise, on the 10th of September, buy in that corn for account of Foote of Bensley & Wagner at 58½ cents a bushel?

A. Yes, sir.

Q. And did you cancel that contract of purchase on the 11th of September, next day, by offsetting it against a sale made known as number 845?

A. Yes, sir.

Q. And did you charge Foote the difference between 56 584 and ⅝ cents A. and 58½ cents, with commission added?

A. Yes, sir. There is one thing in these questions: you say a transaction made for another customer; some of them might be made with Mr. Foote.

Q. Yes; that is so; if you notice it, speak of it. Did you, on the 10th of September, 1875, buy for Foote 5,000 October corn of R. P. Murphy at 58 and ⅝ cents a bushel?

A. Yes, sir.

Q. And did you, on the 15th of September, cancel that purchase by offsetting it against a sale you had made for a customer known as transaction 858?

A. Yes, sir.

Q. And did you sell that corn for Foote, on the 29th of October, at 52 and ⅞ cents a bushel?

A. Yes, sir.

Q. To George Webster?

A. Yes, sir.

Q. And charged Mr. Foote the difference between 52 and ⅞ cents a — and 58 and ⅝ cents a bushel?

A. Yes, sir.

Q. Did you, on the 10th of September, likewise buy for Foote 5,000 October corn of J. S. Perrionette & Company at 59 and ⅝ cents a bushel?

A. Yes, sir.

Q. And did you, on the 11th, cancel that contract of purchase by offsetting it against a sale made for a customer known as 854?

A. Yes, sir.

Q. Did you sell that corn, on the 29th of October, for Foote's account, to Wilkins, Whitney & Dutch?

A. Yes, sir.

Q. And charged Foote the difference between 53 cents and 59 and ⅝ cents a bushel in that transaction, with commission added?

A. Yes, sir.

Q. Did you, on the 16th day of September, buy for Ira Foote of Moses Jones & Brother 5,000 October corn at 59 cents a bushel?

A. Yes, sir.

Q. And, on the 8th day of October, you settled that contract of purchase by offsetting it against a transaction known as 898?

A. Yes, sir.

Q. Did you, on the 30th of December, sell for account of Foote that corn to J. S. Perrionette & Company at 50 cents a bushel?

A. Yes, sir.

585 Q. And did you charge up the difference between 50 cents and 59 cents a bushel to Foote?

A. Yes, sir.

Q. And did you, on the 16th day of September, buy for account of Foote of A. Eichold 5,000 October corn at 58½ cents a bushel?

A. Yes, sir.

Q. That corn was delivered to you October 19th, wasn't it?

A. Yes, sir.

Q. You didn't offset that contract against any other?

A. Settled cash?

Q. Well, it was delivered, I mean.

A. Yes, sir.

Q. Did you, on the 30th of December, sell that corn for account of Foote to J. S. Perrionette & Company for 50 cents a bushel?

A. Yes, sir.

Q. And you charged Foote up the difference, did you, between 50 cents and 58½ cents a bushel in that transaction?

A. Yes, sir.

Q. Did you, on the 8th of October, buy of D. J. Lake for Foote November corn at 54 and ⅜ cents a bushel?

A. Yes, sir.

Q. And on the 4th day of November you settled off that contract of purchase by offsetting it against a sale made for a customer known as transaction 926?

A. Yes, sir.

Q. Did you, on the 30th of December, sell that corn for Foote to J. S. Perrionette & Company at 49½ cents a bushel?

A. Yes, sir.

Q. And did you charge up Foote the difference between 49½ cents and 54 and ⅜ cents a bushel, with commission added?

A. Yes, sir.

Q. When I say charge up the difference between two prices or credit the difference I always mean to include the commission added, if it is a loss, and the — subtracted, if it is a profit.

A. In this case, and in one or two others, there would be other charged besides.

Q. Did you, on October 11th, buy of Culver & Company 5,000 November corn for Foote at 55 cents a bushel?

A. Yes, sir.

586 Q. Did you, on October 23rd, cancel that contract of purchase by offsetting it against a sale made for another customer, known as transaction 877?

A. Yes, sir.

Q. Did you, on the 30th of December, sell for Foote to Perrionette & Company this corn at 49½ cents a bushel?

A. Yes, sir.

Q. And did you charge up Foote the difference between 49½ cents and 55 cents with the other charges?

A. Yes, sir.

Q. Did you, on the 11th of October, likewise buy for Foote of W. W. Templeton 5,000 November corn at 54 and ⅜ cents a bushel?

A. Yes, sir.

Q. And did you cancel that contract of purchase on the 17th of October, 1875, by offsetting it against a sale made for a customer known as 896?

A. Yes, sir.

Q. Did you, on December 30th, sell that corn for Foote to Perrionette at 49½ cents a bushel?

A. Yes, sir.

Q. And did you charge Foote the difference between 49½ cents and 54 and ⅞ cents a bushel with the other charges?

A. Yes, sir.

Q. Did you, on the 19th of October, buy for Foote 5,000 November corn of S. H. Larminie & Company at 50½ cents a bushel?

A. Yes, sir.

Q. Did you, on the 12th of November, cancel that contract of purchase by offsetting it against a sale you made for a customer known as 957?

A. Yes, sir.

Q. Did you, on the 30th of December, sell that corn for Foote to J. S. Perrionette & Company at 49½ cents a bushel?

A. Yes, sir.

Q. And charged Foote the difference between 49½ cents and 50½ a bushel with other charges?

A. Yes, sir.

Q. Did you, on the 3rd of November, buy for Foote 5,000 November corn at 50 and ⅞ cents a bushel?

A. Yes, sir.

Q. That corn was delivered on the 30th, wasn't it?

A. Yes, sir.

Q. And you sold that corn to W. E. McHenry on the 31st of December at 52 cents a bushel?

A. Yes, sir.

Q. And you credited Foote, did you, the difference between
587 50 and ⅞ cents a bushel and 52 cents, less commission?

A. Yes, sir.

Q. In his ledger account?

A. There is one thing about those accounts on here. It is marked Hooker first and Foote afterwards; that might have been one of these transactions where Hooker was credited.

Q. Did you on the 3rd of November buy of E. S. Duncan 5,000 November corn at 51 cents a bushel?

A. Yes, sir.

Q. Did you on the 31st of December sell that corn to W. E. McHenry at 53 cents a bushel?

A. Yes, sir.

Q. And did you credit Mr. Foote the difference between 51 cents and 53 cents a bushel, less commission?

A. Yes, sir.

Q. Did you on the 7th of December buy of Hanchett & Company 5,000 December corn at 47½ cents a bushel?

A. Yes, sir.

Q. Did you on the 31st of December sell that corn for Mr. Foote at 50 cents a bushel?

A. Yes, sir.

Q. And didn't the purchase and sale cancel each other?

A. Yes, sir.

Q. And that is all there is, so far as the delivery is concerned, isn't it?

A. Yes, sir.

Q. No corn received or delivered?

A. No, sir.

Q. Now, then, did you credit Mr. Foote the difference between 47½ cents a bushel and 50 cents a bushel in his ledger account, less the commission?

A. Yes, sir.

Q. Did you on the 7th of December, 1875, buy of Comstock & Company 5,000 seller December corn for Foote at 47 and ⅜ cents a bushel?

A. Yes, sir.

Q. Did you on the 29th of December cancel that contract of purchase by offsetting a sale made known as transaction 933?

A. Yes, sir.

Q. And did you on the 30th of December sell that corn to J. C. Myer at 49 cents a bushel?

A. Yes, sir.

Q. Did you on the 30th, the same day, cancel that contract
588 of sale by offsetting it against a purchase made for a customer known as transaction 993?

A. Yes, sir.

Q. Did you on the 8th of December buy of Kingsman & Company 5,000 seller January corn for Foote at 45 cents a bushel?

A. Yes, sir.

Q. And did you on the 27th of April, 1876, sell that corn to W. T. Baker & Company at 45 cents a bushel?

A. Yes, sir.

Q. So in that transaction Mr. Foote was charged a commission only, was he?

A. Was delivered cash.

Q. Commission and charges, if there were any?

A. Yes, sir; no difference.

Q. No difference in the purchase and selling price?

A. No, sir.

Q. And, also, did you buy on Dece-ber 8th 5,000 more January corn for Foote, of Kingsland & Company, at the same price, 45 cents a bushel?

A. Yes, sir.

Q. And did you sell the same corn on the 27th of April, 1876, to Baker & Company, the same parties you sold the other to?

A. Yes, sir.

Q. And in that case, if there were any, Mr. Foote would be charged with carrying charges and commission, would he?

A. Yes, sir.

Q. And nothing else?

A. That is all.

Q. The prices washed, did they?

A. Yes, sir.

Q. Did you on the 8th of December also buy of Field, Dinsmore & Company 5,000 December corn at 48¼ cents a bushel?

A. Yes, sir.

Q. Did you on the 31st of December sell that corn to Field, Dinsmore & Company at 50 cents a bushel?

A. Yes, sir.

Q. And did that contract of sale and contract of purchase cancel each other?

A. Yes, sir.

Q. And Mr. Foote was credited, was he, with the difference between 48¼ cents and 50 cents a bushel, less commissions?

A. Yes, sir.

Q. That is all there is to that transaction, isn't it?

A. Yes, sir.

589 Q. Did you likewise, on said 8th of December, buy of J. K. Fisher & Company 5,000 December corn for Foote at 48 and ⅛ cents a bushel?

A. Yes, sir.

Q. And cancelled that contract of purchase on December 30th by offsetting it against a sale made for a customer known as transaction 986?

A. Yes, sir.

Q. And did you, on the 31st of December, sell that corn for Foote to Cooley, Dwight & Gillette at 50 cents a bushel?

A. Yes, sir.

Q. And did you, on the same day, cancel the contract of sale by offsetting it against a purchase made for a customer known as transaction 958?

A. Yes, sir.

Q. And all these is to that transaction was that Mr. Foote was credited the difference between 48 and ⅛ cents and 50 cents, less commission?

A. Yes, sir.

Q. Did you, on the 11th of January, 1876, buy for Foote of W. M. Young & Company 5,000 January corn at 44¼ cents a bushel?

A. Yes, sir.

Q. And did you sell that corn on April 27th to W. D. Baker & Company at 45 cents a bushel?

A. Yes, sir.

Q. And Mr. Foote was credited with the difference, less any other charges there might have been, was he?

A. Yes, sir.

By Mr. RIDDLE: You mean difference that there may have been a profit or a loss in each case?

A. Yes, sir.

By Mr. BISBEE: On March 8th, 1876, did you buy for Foote, of

Kingsland & Company, 5,000 May corn for 47 and ⅜ cents a bushel?

A. Yes, sir.

Q. And did you, before May delivery arrived and on April 26th of that year, cancel that contract of purchase by offsetting it against a sale made for a customer known as 1070?

A. Yes, sir.

Q. And did you, on the 27th of April, sell that corn for Foote, to W. T. Baker & Company, at 46 cents a bushel?

A. Yes, sir.

Q. Did you, on April 29th, cancel that contract of sale by offsetting it against a purchase made for a customer known as 1058?

A. Yes, sir.

590 Q. Did you on the 9th of March buy of Spruance, Preston & Company 5,000 May corn for Foote at 47¼ cents a bushel?

A. Yes, sir.

Q. And did you on April 27th sell that corn for Foote to W. T. Baker & Company, for Foote, at 46 cents a bushel?

A. Yes, sir.

Q. And did you charge Foote the difference between 47¼ cents and 46 cents a bushel, with commission added, in his ledger account?

A. Yes, sir.

Q. That was all he had to do with that transaction, was it?

A. Yes, sir.

Q. Did you on the 10th of March also buy of Morse, Ward & Company 5,000 seller May corn at 47 cents a bushel?

A. Yes, sir.

Q. And did you on March 24th, 1876, settle off that contract of purchase and cancel it by offsetting it against a sale made for a customer known as 1039?

A. Yes, sir.

Q. And did you on April 27th sell that corn for Foote to W. T. Baker & Company at 46 cents a bushel?

A. Yes, sir.

Q. And charged Mr. Foote with the difference between 47 cents and 46 cents a bushel, with commission added?

A. Yes, sir.

Q. Did you on the 23rd of March buy of William Young & Company 5,000 seller May corn at 49 and ⅛ cents a bushel?

A. Yes, sir.

Q. And did you on April 27th sell that corn for Foote to W. T. Baker & Company at 45 and ⅜ cents a bushel?

A. Yes, sir.

Q. Did you cancel that contract of sale on the 9th of May, 1876, against a sale made for another customer, known as 1066?

A. Yes, sir.

Q. And did you charge Foote on his ledger account the difference between 45 and ⅜ cents and 49 and ⅛ cents a bushel, with commission added?

A. Yes, sir.

Q. Did you on the 23rd of March buy of Spear & Driver 5,000 seller May corn at 49¼ cents a bushel?

A. Yes, sir.

Q. Did you on April 27th sell that corn to W. C. Comstock at 45½ cents a bushel?

A. Yes, sir.

591 Q. Did you, on April 28th, next day after you had sold this corn, cancel the contract of sale by offsetting it against a purchase made for a customer known as 1052?

A. Yes, sir.

Q. And you charged Mr. Foote the difference between 49¼ cents and 45½ cents a bushel, with commission added?

A. Yes, sir.

Q. Did you, on March 24th, buy of Wilkins, Whitney & Dutch 5,000 seller May corn at 49½ cents a bushel?

A. Yes, sir.

Q. Did you, on March 29th, cancel off that contract of purchase by offsetting it against a sale made for a customer known as 1071?

A. Yes, sir.

Q. Did you, on the 27th of April, sell that corn for Foote to McDermid & Oertel at 45½ cents a bushel?

A. Yes, sir.

Q. And did you cancel that contract of sale on April 28th against a purchase made for a customer known as 1072?

A. Yes, sir.

Q. And charged up Mr. Foote the difference, did you, on the ledger, between 45½ cents and 49½ cents a bushel, with commission added?

A. Yes, sir.

Q. Did you, on March 24th, buy of Wilkins, Whitney & Dutch another 5,000 seller May corn, at 49½ cents a bushel?

A. Yes, sir.

Q. And did you cancel that contract of purchase on April 10th by offsetting it against a contract of sale known as 1057?

A. Yes, sir.

Q. Did you, on April 28th, sell that corn, for account of Foote, to Field, Dinsmore & Company, at 45 and ⅜ cents a bushel?

A. Yes, sir.

Q. And charged up Foote the difference between 45 and ⅜ and 49½ cents a bushel, with commission added, on his ledger account?

A. Yes, sir.

Q. Did you, on the 27th of March, 1876, buy for Foote, of Morse, Ward & Company, 5,000 seller May corn, at 49 and ⅛ cents a bushel?

A. Yes, sir.

Q. And did you, on April 28th of that year, cancel that contract of purchase by offsetting it against a sale made for a customer known as 1062?

A. Yes, sir.

592 Q. Did you sell that corn for Foote on April 28th to Field, Dinsmore & Company for 43 and ⅜ cents a bushel?

A. Yes, sir.

Q. And did you charge Foote the difference between 45 and ⅜ cents and 49 and ⅛ cents a bushel, with commission added in his ledger account?

A. Yes, sir.

Q. Did you, on April 26th, buy for Foote of Spear & Driver 5,000 seller June corn at 46 and ⅜ cents a bushel?

A. Yes, sir.

Q. And on May 29th of the same year cancel that contract of purchase against a sale known as 1084?

A. Yes, sir.

Q. Did you on May 29th sell that corn for Foote to J. S. Perrionette & Company at 43¼ cents a bushel?

A. Yes, sir.

Q. Can you state, from looking at your option book, how that sale was cancelled?

A. No; I cannot.

Q. It is impossible to state, isn't it?

A. There is nothing here to indicate it.

Q. Isn't it true that about that time S. G. Hooker & Company failed?

A. I was thinking it was June they suspended business there temporarily. It might have been about that time; I couldn't tell the date. They stopped business temporarily the latter part of May or the first of June.

Q. 1869?

A. Yes, sir; well, I don't know.

Q. It is your impression, then, isn't it, that it was about that time the firm of S. G. Hooker & Company failed?

A. Yes, sir.

Q. And isn't it a fact that, having this contract of sale made for J. S. Perrionette & Company, that there was a settlement made between S. G. Hooker & Company and Perrionette & Company of some kind so that there was no more cancelling of contracts after that date?

A. They suspended business and then resumed again, I think, in 1875. This is 1876. I think this was their final suspension. If that is so all of those trades, all their contracts on the board, would have to be closed up.

593 Q. And they were so closed up?

A. Yes, sir.

Q. And isn't that your interpretation of the word "settled," in red ink in your option book, in this transaction?

A. I think that is; that is my impression, but I am not positive of it.

By Mr. RIDDLE: Settled under the rules of the board of trade?

A. Yes, sir.

By Mr. BISBEE: That is, if Hooker & Company had this corn sold

to Perrionette & Company and failed, S. G. Hooker & Company would settle with Perrionette by paying the difference or receiving the difference on the day that he suspended, would'-t he?

A. Yes, sir.

Q. And that would end the——

A. Perrionette would close up the trades at the market that day and pay or collect.

Q. The difference?

A. The difference, profit or loss, on this transaction.

Q. And all Hooker & Company would do in that transaction would be to either receive the difference coming to them or pay the difference going from them?

A. Yes, sir.

Q. In that transaction that I have just gone through with, Mr. Foote was charged, was he not, the difference between 46 and ⅜ cents and 43¼ cents, with commission added?

A. Yes, sir.

Q. Did Hooker & Company pay that difference out in money?

A. On their first suspension, I am not positive about that; they did pay in full everything.

Q. Did they on their suspension in May or June, 1876?

A. On their final suspension they paid by giving their notes, and settling up with their creditors on the board by giving notes.

Q. By giving notes?

A. Yes, sir.

Q. Did they pay the notes?

A. (Objected to.)

A. I can answer it if you wish. They paid the notes; that is the fact.

594 Q. They did pay the notes?

A. Yes, sir.

Q. Now, then, on the 26th of April did you purchase of B. Adams & Company, for account of Foote, 5,000 seller June corn at 46 and ⅜ cents a bushel?

A. Yes, sir.

Q. Did you, on May 24th, settle off that contract of purchase by offsetting it against a sale for a customer known as 1112?

A. Yes, sir.

Q. And did you, on May 29th, sell that corn to D. H. Lincoln for Foote at 43¼ cents a bushel?

A. Yes, sir.

Q. And that is a transaction, isn't it, wherein S. G. Hooker & Company failed before the delivery day arrived?

A. It is similar to the other.

Q. And was settled the same as 1091, was it?

A. Yes, sir.

Q. And did you, on the 27th of April, buy of W. T. Templeton for Foote 5,000 seller June corn at 45 and ⅜ cents a bushel?

A. Yes, sir.

Q. And settled off that contract of purchase on the 1st day of May of that year by offsetting it against a sale contract known as 1087?

A. Yes, sir.

Q. And on the 29th of May did you sell that corn to S. G. Tichner for Foote at 43¼ cents a bushel?

A. Yes, sir.

Q. And soon after that Hooker & Company failed?

A. Yes, sir; I think so.

Q. And was settled off the same as the preceding two?

A. Yes, sir.

Q. Did you, on the 27th of April, 1876, buy 5,000 seller June corn for Foote, of D. H. Lincoln, at 45 and ⅝ cents a bushel?

A. Yes, sir.

Q. And that was settled out when Lincoln failed, was it not, between Hooker & Lincoln—that is, S. G. Hooker & Company and D. H. Lincoln?

A. Yes, sir.

Q. Did you, on the 29th of May, seel that corn for Foote to H. C. Munch at 43 and ⅜ cents a bushel?

A. Yes, sir.

Q. And that was settled up between S. G. Hooker & Company and Munch near that time when S. G. Hooker & Company failed, wasn't it?

A. Yes, sir.

Q. There was no delivery of either the purchase or the sale?

A. No, sir.

595 Q. Did you on the 27th of April also buy for Foote 5,000 seller June corn of George C. Tichner at 45 and ⅝ cents a bushel?

A. Yes, sir.

Q. And on the 29th of May did you sell that corn to H. C. Munch at 43 and ⅜ cents a bushel?

A. Yes, sir.

Q. Both purchase and sale were settled up by S. G. Hooker & Company with the other parties after they failed, were they not?

A. Yes, sir.

Q. And there was no delivery in either case. Is that correct?

A. Yes, sir; I am not positive as to this being the time, but I think it is so; wouldn't want to be positive.

Q. And in these last 5 transactions I have inquired about Mr. Foote was charged up the difference, was he not, between the purchasing price and the selling price, with commission added to it?

A. Yes, sir.

Q. And that was all there was, so far as he was concerned, was it not?

A. Yes, sir.

Q. Did you on the 27th of April buy 5,000 seller June corn for Foote of M. C. Baker at 45 and ⅝ cents a bushel?

A. Yes, sir.

Q. Did you cancel that contract of purchase on the 20th day of

May of that year by offsetting it against a sale made for a customer known as 1076?

A. Yes, sir.

Q. Did you sell that corn for Foote to Field, Dinsmore & Company on the 29th of May at 43¼ cents a bushel?

A. Yes, sir.

Q. And that sale was settled up the way the others were when S. G. Hooker & Company failed, wasn't it?

A. Yes, sir.

Q. And Mr. Foote was charged the difference, was he, between 55 and ⅜ cents and 43¼ cents a bushel, with commission added?

A. Yes, sir.

Q. Did you on the 27th of April buy of H. C. Munch for Foote 5,000 seller June corn at 45 and ⅜ cents a bushel?

A. Yes, sir.

Q. And that was settled up after Hooker & Company failed, wasn't it?

A. Yes, sir.

596 Q. The way you have described. And did you on the 29th of May of that year sell for Foote to Field, Dinsmore & Company 5,000 seller June corn at 43¼ cents a bushel?

A. Yes, sir.

Q. And that was settled up after the failure in the same way?

A. Yes, sir.

Q. And the difference between 45 and ⅜ cents and 43¼ cents a bushel was charged to Mr. Foote?

A. Yes, sir.

Q. And there was no delivery either way?

A. No; I think that is right; sold by Field, Dinsmore & Company; so they entirely sold out.

Q. Did you on the 27th of April buy of H. C. Munch another 5,000 seller June corn for Foote at 45 and ⅜ cents a bushel?

A. Yes, sir.

Q. And that was settled up after the failure in the same way?

A. Yes, sir.

Q. And on the 29th of May you sold to W. R. Brainard this same corn at 43¼ cents a bushel?

A. Yes, sir.

Q. Both purchase and sale, then, were settled after the failure in the same way?

A. Yes, sir.

Q. There was no delivery, was there?

A. No, sir.

Q. And the difference between 43¼ cents and 43 and ⅜ cents, with commission, was charged up to Foote?

A. Yes, sir.

Q. Did you on the 28th of April buy another 5,000 seller June corn of Field, Dinsmore & Company at 45¼ cents a bushel?

A. Yes, sir.

Q. And that was settled up after S. G. Hooker & Company failed, was it, the same as the other?

A. Yes, sir.

Q. Did you on the 29th of May sell that corn for Foote at 43¼ cents a bushel?

A. Yes, sir.

Q. And was settled up after the failure, was it?

A. Yes, sir.

Q. There was no delivery, was there?

A. No, sir.

Q. And the difference between 43¼ and 45¼ cents a bushel, with commission, was charged up to Mr. Foote?

A. Yes, sir.

597 Q. Did you, on April 28th, buy another 5,000 seller June corn of Field, Dinsmore & Company for 45¼ cents a bushel?

A. Yes, sir.

Q. And that was settled up after the failure, was it?

A. Yes, sir.

Q. There was no delivery?

A. No, sir.

Q. Did you sell that corn on the 29th of May to J. C. Myers & Company at 43¼ cents a bushel?

A. Yes, sir.

Q. And that was settled after the failure?

A. Yes, sir.

Q. And there was no delivery?

A. No, sir.

Q. Please point out in your ledger account where Mr. Foote is credited with the profit on 5,000 November wheat which you bought for him on the 13th of October, 1875, the wheat having been sold October 11th.

A. This ledger don't show it; this is 1874.

Q. Examine the Exhibits D and C, which have been put in evidence as a correct copy of the account kept by S. G. Hooker & Company with Ira Foote, and point out thereon, if you can, any credit to Ira Foote upon the 5,000 bushels of wheat bought October 11th of William Young & Company at $1.07 and sold October 13th to Charles Wetherell, the same being November wheat, the option book showing it was sold at $1.07 and bought at $1.07 and ⅝.

A. That wouldn't show a credit; would show a loss in the transaction.

Q. The transaction of the wheat sold October 12th to C. A. Mair & Company at $1.08 a bushel was bought next day, October 13th, at $1.07 and ⅝ a bushel. Point out, of you can, any profit credited to Mr. Foote on that transaction.

A. I don't find any credited to correspond with that profit shown in that transaction, but it might have been credited up in bulk several times.

Q. Point it out anywhere in the account where Foote ever got credit on that transaction.

A. Might be half a dozen of those transactions——

598 Q. Is there any credit for that profit on the book?

A. Don't see any credit there to correspond with that amount.

Q. If you can, state any credit anywhere to Foote on that item.

A. Would have to trace it up to see where it was.

Q. Take all the time you want to to trace it up.

A. I should judge from the original entry in this option book that that was one of the transactions that never was credited to Mr. Foote, but Mr. Hooker took the profit, as it shows here account Hooker.

Q. Shows account Ira Hooker, account H., does it?

A. Yes, sir.

Q. That never was credited to Foote, was it?

A. No, sir.

Q. Now examine the same ledger account and point out, if you can, any profit to Foote in transaction 913, in which, on October 18th, 5,000 bushels of November wheat was sold to Bensleys & Wagner at $1.10, and bought in October 21st of W. E. McHenry at $1.07 and ⅝ cents a bushel?

A. That profit, to the best of my recollection, was paid to Mrs. Hooker; Mrs. H. here.

Q. Then it is not credited to Mr. Foote?

A. In that case it wouldn't appear in his account.

By Col. JACKSON: State what you refer to by "here."

A. On the option book the purchase is made for account Ira Foote, account Mrs. H.

Q. The option book you have in your hand?

A. Yes, sir.

Q. What is the page?

A. 166.

By Mr. BISBEE: That would amount to $156.25, those two items, wouldn't it?

By Mr. RIDDLE: You mean by that the original entry of the transaction, do you?

A. Yes, sir.

By Mr. BISBEE: $156.25 is the correct amount of the profit?

599 A. There are three transactions of Mrs. Hooker. One of them shows a loss that would be deducted from the two that show a profit.

Q. Wouldn't that show a profit of just $156.25?

A. Yes, sir; the three transactions.

Q. The three transactions would show a profit of $156.25, wouldn't they?

A. Yes, sir.

Q. Now, examine the transaction 672 in your option book, which was a purchase of June wheat on the 28th of April at $1.06 and a sale on the 30th of April at $1.09, which would show a profit of exactly $150. Was that $150 credited to Mr. Foote in his account?

A. I should say not. It was similar to the others.

Q. Well, it is credited to Mr. Foote. The profit would be just $150, wouldn't it?

A. Yes, sir.

Q. Refer to your option book and take transactions 641, 656, 660, and 706, and state what the loss would be on those 4 transactions.

A. I get it $2,518.75—that is, without any commission.

Q. The loss on those transactions was $2,518.75, was it?

A. Yes, sir.

Q. How much did you charge Mr. Foote for the loss on those 4 transactions?

A. $2,618.75 seems to be charged here the 31st of May on 20,000 wheat. The loss would be $2,518.75. Commission, ½ cent a bushel, would amount to $100 and would make it just $2,618.75. The account was rendered May 31st. Transactions closed up at different dates.

Q. Isn't it true that the loss to Foote on those 4 transactions are charged $25 more that they actually were?

A. I wouldn't want to say that unless I knew what the commission was they were charging at that time. The way I figured it up here it is correct—$2,618.75.

Q. Now, isn't the commission on your journal on those 4 transactions charged $75?

A. Yes, sir.

600 Q. Isn't the original loss on the articles without commission charged at $2,543.75?

A. Yes, sir.

Q. And isn't that $25 more than the actual loss, say nothing about commissions?

A. Yes, sir; how he got it that way I don't know.

By Mr. RIDDLE: You always rendered your bills "E. and O. E.," didn't you?

A. Yes, sir.

By agreement of counsel the taking of further testimony in this case is adjourned to Thursday, July 22nd, 1886, at 2 o'clock p. m.

601 JULY 22ND, 1886.

Cross-examination of JAMES B. NORTON continued by Mr. BISBEE:

Q. Examine the figures on page 89 of the blotter, under date of May 31st, 1875, and state if those figures are not carried out just $25 too much.

A. There are two errors in extensions of $12.50 each. Extension reads $481.25; it should be $468.75, making a difference of $12.50 on one. The other is $631.25; it should be $618.75, making a difference of $12.50 on that.

Q. It is carried out $25 too large, isn't it?

A. Yes, sir.

Q. Isn't the item of $281.25 carried out on page 89 on the blotter under date of May 29th, 1875, on 5,000 bushels of corn, $12.50, larger than it should be?

A. Yes, sir.

Q. Examine the account of Ira Foote under date of June 1st, 1875. In the blotter kept by you 5,004 bushels and 10 pounds at 79 cents a bushel are carried out $4,053.28. State if that is not carried out just $100 too large.

A. It is.

Q. Did you ever hear any conversation in the house of S. G. Hooker & Company in relation to substituting one trade for another for a customer?

A. You mean in the office in a business way?

Q. Yes.

A. I don't know as we ever talked about substituting.

Q. Isn't it a fact that you never heard of any such thing as when one customer's trades were rung up of taking another trade and substituting in the place of it and putting it down in the book in that way?

A. Always understood if we had a purchase made that was settled—if we had another purchase than the original purchase that we had not settled and another one held in its place we always—for instance, if we had 20,000 bushels of corn bought for one party and 20,000 for another we settled up the 20 against sales made for the other man and hold his 20 in place of it; always figured to find
602 whether we had the right amount of purchases for the customer.

Q. But did you ever hear any conversation to the effect of where a man's trade was wrung up that there was another trade brought forward, singled out, and put down to the customer whose trade you had rung up on your books?

A. Never selected them out and put them down in that place.

Q. Did you ever hear any conversation of that kind between the members of the firm of S. G. Hooker & Company?

A. No; the members of the firm left it to the book-keeper to keep the thing straight.

Q. Did you ever hear any such conversation?

A. No; don't know as I did.

Redirect examination:

By Mr. RIDDLE: As a matter of fact, what did you do when you settled a purchase or sale for the account of a customer in regard to substituting some other contract in place of the one settled?

A. We would make an entry in the option book, as we called it, showing that settlement was made of a sale for a customer to answer the purpose of another. I would make a red-ink entry, saying this was settled with number so and so, which I would know would be a purchase that we had.

Q. To take the place of the trade closed out?

A. Take the place of the trade closed out. You could tell at a glance that we had a contract in the place of this one settled.

Q. Did you uniformly pursue the practice in the office?

A. Yes, sir.

Q. So that you never offset or settled a trade prior to the maturity of it without substituting some other party for any person with whom you had a contract who might be released from the obligation of any contract?

A. No, sir.

Q. Does that Exhibit Wheat and that Exhibit Corn show, as a

matter of fact, all of the trades you had for account of Foote
603 and the history of those trades—I mean with reference to their being offset and settled with other parties?

A. Yes; so far as I have examined them—not all of them—I have found them correct.

Q. Did you ever hear any conversation between Mr. Foote and the firm of S. G. Hooker & Compant in regard to dealing in differences?

A. No, sir.

Q. Do you know what the understanding was between Mr. Foote and that firm in regard to that?

A. The understanding was the same as it was with all customers; there was nothing different; made purchases and sales the same as we did for all customers.

Q. Did you make purchases and sales of actual property?

A. Actual property—actual delivery.

Q. Will you explain what you mean in answer to the question by Mr. Bisbee in regard to charging and crediting differences to Mr. Foote—what you mean by the difference?

A. I mean by that the difference in price between 54 cents and 57 cents, which would be 3 cents a bushel or $150. We used that word difference as difference in price. A cent a bushel would be $50, and that was the actual profit or loss made in those transactions.

Q. On what—purchase and sale of the property?

A. Yes, sir.

Q. Do you know whether or not there was ever any trade made for the account of Mr. Foote through the house of S. J. Hooker & Company when the understanding was that such trades should be settled on the basis of the difference in price?

A. No, sir.

Q. Did the firm of S. G. Hooker & Company as a firm ever take any trades for or on account of Foote themselves—bucket-shopped it, I mean?

A. No, sir.

Q. Were all the transactions made for the account of Foote through that house made in the usual course of business with other members of the board of trade of the city of Chicago?

A. Yes, sir.

604 Q. In every instance?

A. I wouldn't be positive about that. I think in looking over the book there is one transaction there that we found which—where they made a trade with another customer. With that exception I think they all were. I know that all the trades they actually made were with members of the board of trade in the regular way. I can't recall the name, but the man himself was a customer of theirs living in Iowa. In that case it might be that they made a trade directly with him for Mr. Foote.

Q. At the market price?

A. Yes, sir; and not being a member of the board, I don't recollect any other case.

Q. Was there any complaint at any time by Mr. Foote in regard to any statement of accounts that you furnished him, showing transactions?

A. No, sir; none that I ever heard of.

Q. At what time, Mr. Norton, if you know, was there a settlement had between S. G. Hooker & Company and Mr. Foote?

(Objected to because there has not been a word inquired of in the cross-examination concerning that subject.)

By the MASTER: He may answer the question.

A. I couldn't give the date without referring——

Q. Can you tell from the books; any of the books present?

A. I can't state the time.

Q. About when?

A. In the fall of the year; their suspension, their failure, was in June.

Q. Were you present when the settlement was made or did you have anything to do with the settlement?

A. Not the final settlement.

Q. You were not present?

A. I think Mr. Geltmacher, Mr. Lincoln, and Mr. Hooker——

605 Q. Made the settlement with Mr. Foote?

A. Yes; or with Mr. Rice. Mr. Foote had nothing to do with it.

Q. Does the exhibit denominated lard show the history of the trades made in provision pork and lard by the firm of S. G. Hooker & Company?

(Objected to for the reason that counsel for the defendants asked the witness in his direct examin-tion concerning both individual trades in lard, and he has been cross-examined upon both the same subject as to each individual trade and now he is asked to state a conclusion of what a piece of paper shows it is improper.)

By Mr. RIDDLE: I want to offer this paper, showing transactions made by the firm of S. G. Hooker & Company for the account of Ira Foote in lard and pork, in corroboration of the testimony of the witness in regard to the transactions in pork and lard.

By Mr. BISBEE: I object to that paper for the reason that it is not a copy from any book kept by S. G. Hooker & Company, but is a conclusion of the man by the name of Arthur Driggs, put on paper, not made, even, by the witness, and is improper testimony, either on direct or cross examination or anywhere else.

(Objection sustained; to which ruling of the master counsel for defendants in cross-bill except.)

Recross-examination:

Q. Isn't it true, Mr. Norton, that Exhibit O, excepting the first two pages thereof, is a correct copy taken from your option book kept at the time by S. G. Hooker & Company?

A. So far as I have examined it, it is.

Q. And isn't it true that that was the only history of the trade you made for Mr. Foote that was kept by the books, excepting your blotter, journal, and ledger account proper?

A. You mean of these transactions?

606 Q. Yes.

A. It is the only one that I have seen, excepting these others that they offered.

Q. Has anything been offered in evidence that is a copy from the books of S. G. Hooker & Company?

A. Those other papers are copied from the books. They are not an exact copy of the books, as I look at them, although the figures are all correct.

Q. But they are not copies of any books, are they?

A. They are taken from the books.

Q. Well, answer my question. Are those exhibits that were put in here upon which you were questioned, exhibits wheat and corn, copies of any book?

A. They were made out and copied from——

Q. Are they copies of any book?

A. They were.

Q. They were copies?

A. Yes, sir.

Q. Of books?

A. As I said before, they are not exact copies, because he has shown in those where the offsets were made in the red-ink entries.

Q. Then they are not copies of any books kept by S. G. Hooker & Company?

A. He had to copy from——

Q. Are they or are they not?

A. You mean exact copies?

Q. Copies of any book or books kept by S. G. Hooker & Company?

A. I don't know what you mean.

Q. I mean like Exhibit O, which I show you. Are they copies of any book kept by S. G. Hooker & Company?

A. They are not.

Q. Isn't this copy, Exhibit O, so far as you know, an exact copy of your option book?

A. Those different entries so far as I know are, yes, sir.

Q. Exactly?

A. Yes, sir.

By Mr. RIDDLE: I object, because Mr. Bisbee went all over this, over and over again, back and forward.

Q. Take the first trade on the option book, which is March
607 25th, 1875, wherein you bought 250 tierces of lard for June delivery of P. P. Oldershaw, at $14.25 a hundred pounds. Now, then, in the margin in red ink there are the words "settled April 15th, number 210." Do you mean to say that the purchase, being account 210, was substituted in the place of that purchase?

A. That was settled with the sale. This is a purchase settled with

a sale number 210 and the purchase was substituted in the place of this; that is what that is for to show——

Q. Purchase number 210?

A. Yes, sir.

Q. That is, the number given there is the number of a particular purchase made for some customer?

A. Yes, sir.

Q. And the sale also; do you mean to say that the purchase number 210 was substituted in the place of the purchase you made of Oldershaw?

A. Yes, sir.

Q. And do you mean to say that is true all through that?

A. It is, so far as I have examined it.

Q. In every instance?

A. No, not in every instance, because we found a good many trades there at the close that don't show anything of that kind.

Q. Now, then, who did you buy the lard for in account 210?

(Objected to because he has gone over that at length on cross-examination of the witness on that same subject.)

By the MASTER: The question may be answered.

Q. It is true, isn't it, that on the 25th of March you bought 250 tierces of lard of Oldershaw for Foote for June delivery?

A. Yes, sir.

Q. That is true, isn't it? It is true, isn't it, that you settled off or cancelled that trade on the 15th of April, before June arrived?

A. Yes, sir.

Q. Now, then, do you say that the purchase number 210 was substituted in place of the Oldershaw matter?

A. I say that this 210 was settled with a sale or this purchase was settled with sale 210 made for Foote with some other customer.

608 Q. You say that the sale in 210 cancelled the purchase made of Oldershaw for Foote?

A. Yes, sir.

Q. That is what you say; is that all you mean by that?

A. I mean this 210 shows that there was substituted in place of this purchase, this being settled against that sale.

Q. You mean to say it was substituted?

A. Yes, sir.

Q. Was there any actual substitution made of that 210?

(Objected to because Mr. Bisbee asked all of those questions on his cross-examination.)

Q. Number 210 was 250 tierces of lard bought of Joseph Jones, wasn't it?

A. Yes, sir.

Q. And it was bought for Horace Aylwin, wasn't it?

A. Yes, sir.

Q. For that party; and that lard you bought for Horace Aylwin was delivered June, wasn't it?

A. Yes, sir.

Q. Now, did you make any charge or any memorandum about any delivery of that lard to Mr. Foote?

A. If he had the purchase.

Q. Did you?

A. I couldn't say without referring to the books.

Q. Refer to all the books there are, and state where you made any charge to Mr. Foote in relation to the delivery of that lard.

A. I couldn't recall that item.

Q. I don't ask you to; but examine the books and state if you did.

A. It would not show on the books in this way.

Q. No; but the question is, Does it show on the books?

A. I don't know.

Q. Will you examine the books that are here before you and point out where it shows, if at all?

A. If you will let me explain why it might not show on the books. That might have been taken on that purchase and delivered out on a sale that we had for Foote; then there would be no entry—no charge; it was settled, the contract, the same as
609 though it had been rung up; might have received the property and delivered it out the same day. In that case the property would not be charged up to Mr. Foote.

Q. I am not asking you what might have been; am asking what the fact was; do you know anything about it?

A. I couldn't without referring to the books.

Q. If there had been any lard delivered for the account of Foote and carried for him, wouldn't there have been insurance charges?

A. Yes, sir.

Q. Elevator charges?

A. No, sir.

Q. Wouldn't there be interest charged?

A. Interest would be charged up in his general account.

Q. Now, then, show where there was any such charge made to Mr. Foote?

A. I will do it. It will probably take me some time to find whether it was done or not.

Q. You may take a week.

A. You want to know whether Mr. Foote was charged for that property?

Q. Yes; if that trade was substituted for Mr. Foote when it was deliver- it was delivered for Foote's account, was it not?

A. Yes, sir.

Q. Show where you made any charge to Foote for insurance or interest or anything of that character or kind on the books, and take all the time you want.

A. If we carried the property for him it would be charged up to his account. The way the books were kept, if we simply received it and delivered it out again on another sale there would be no entry made.

By Mr. RIDDLE: You mean one sale for Foote?

A. Yes, sir.

By Mr. BISBEE: Did you deliver that lard out on a sale made for Mr. Foote's account?

A. Couldn't tell without referring to the books.

Q. Well, refer to the books and state when you delivered it, who to and when.

A. Statement of account will show whether Foote was charged.

Q. No; but you show it from the books?

610 A. Would have to see whether it was charged up or not; don't recollect.

Q. The books are before — ledger, blotter, cash book, and journals and option book. Show me where that lard was delivered to for Foote's account.

A. There was a great deal of this property received—delivered to us cash, delivered out again on sales the same day—that wouldn't show in Foote's account at all, no more than as though the trades had been cancelled in the ordinary rings we made—property taken in and delivered out to some other party.

Q. Do you make that answer for the reason that you can't show whether it was delivered for the account of Foote?

A. No, sir; that to identify that exact transaction I couldn't tell; that was simply delivered 250 cash lard. If it was delivered out that same day on another contract I couldn't tell from the books.

Q. Have you anything in the world to show whether you delivered that 250 tierces of lard out on a contract for Foote or on a contract for any other customer?

A. Yes; show in the margin here at that date. It was delivered out cash.

Q. Very well; show it.

A. Might have to go through the whole option book to do it.

Q. First, I want to know this: Have you got any charges against Mr. Foote for interest or insurance or storage on that lard? And, second, tell me who you delivered that lard to and what you did with it.

A. This transaction here don't show when we received it. We received on the contract cash property of any kind. I simply mark it cash; then, if we delivered out on another contract, whether for Foote or any one else, I mark it delivered out cash. It shows that then trades were settled by the delivery of the property. There is no charge made to him at the time on that cash property. Perhaps it was delivered right out again same day.

Q. Isn't this the exact truth about it, that in that trans-

611 action you bought the lard of Oldershaw on the 25th day of March, 1875, and sold it on the 29th of March, 1875, having a contract only 4 days long? That was June lard. Isn't that true? and isn't it true that on April 19th you credited Foote the profit on that transaction? and isn't it also true that that is the only account you have got with Foote concerning it?

A. Yes, sir; the account was rendered to him.

Q. That is true, isn't it?

A. Yes, sir.

Q. You bought for Foote on the 25th of March and sold the 29th of March June lard, and rendered your account on April 19th; isn't that all there is for Foote in that transaction?

A. Yes, sir.

Q. And don't you know there is not any entry on your books anywhere concerning Mr. Foote excepting what I have just detailed?

A. As far as this trans-ction goes, there is not.

Q. Don't you know further that you didn't offset this purchase by offsetting it until April 15th, 17 days after you sold that lard for Foote?

A. It was settled before the account was rendered. This says the 19th.

Q. Isn't it true that you settled the purchase with Oldershaw on the 15?

A. Yes, sir.

Q. But isn't it true, so far as Foote is concerned, you sold it on March 29th?

A. Yes, sir.

Q. It is true, isn't it? That being true, don't you know that there was no lard delivered on June 1st in that transaction for account of Foote?

A. I know that I testified to that before, that that trade was offset against 210 lard delivered on 210 in——

Q. And when you had settled that purchase with Oldershaw off Foote had no lard, had he? He had sold out on the 29th of March, 17 days before?

A. He had not in that transaction. If we had a contract open, that or some other, this lard, being delivered, might in the same day be delivered out on another contract.

612 Q. But it was no reason why it should be delivered out on his contract?

A. If he was long, no lard held to purchase for his account, of course we didn't take lard and carry it for him.

Q. You can't tell when you delivered the lard, can you, from your books?

A. By looking the account up to find out the date we deliver.

Q. Have you any reason to believe that you delivered it out for the account of Foote, inasmuch as he closed it up 4 days before he bought?

A. May have had other transactions; couldn't tell.

Q. You couldn't tell anything about it, could you?

A. No, sir.

Q. Now, isn't that true—the history of that transaction true—with nearly all these transactions through the book?

A. No; because a good many of them were—they were settled up and property was not delivered. In this case the property was delivered here on the purchase. That was substituted in the place of that, making this different.

Q. How long after Mr. Foote sold out the lard was it delivered?

A. Can't tell from the books.

Q. Didn't he sell it on September 29th, and don't it appear right before you there?

A. I can't tell when these contracts were delivered.

Q. Didn't he sell that lard 4 days after he bought it? Buy it the 25th and sell it the 29th?

A. Yes, sir.

Q. And was it not delivered on the 1st of June to Hooker & Company?

A. This is a March contract. It is very evident it would be delivered on the 1st of June.

Q. And that was 2 months and 2 days after Mr. Foote had sold out and ceased to have any interest in it, wasn't it?

A. Yes, sir.

Q. Now, then, do you mean to say that you substituted the lard appearing in your ledger account, 210, which you bought of Joseph Jones for Horace Aylwin in place of the one that you bought of P. P. Oldershaw for Foote on March 25th, when you had sold out that same lard on March 29th?

613 A. This shows that the settlement of both those items was not made at the same time.

Q. But that is not the question.

A. Then if either a purchase or sale were settled off they were not settled one with the other; they would be substituted in each case.

Q. But after March 29th, 4 days after the purchase of that lard, what interest did Mr. Foote have in it?

A. He had no monied interest in it. He would be credited with his difference—the profit on that lard on April 19th.

Q. That is the day you got around to make up the statement of the account?

A. Yes, sir.

Q. And he didn't have a particle of interest in it after March 29th?

A. No, sir.

Q. Now, then, why did you say that you substituted a moment ago the lard that you had sold by account 210 in place of this for Foote's account? Why did you say that? You didn't mean that, did you?

A. If it shows 210 it only shows that if we settled up that sale or that purchase with another sale that we had a purchase—corresponding purchase, 210—in place of it. That is what that means.

Q. Shows it for whose account?

A. As long as the contract stood open it would be account of Foote.

Q. His account was closed March 29th, before you settled off the purchase. What do you want to substitute an account for his for?

A. If we settled purchase first we should have to have another purchase in place of it corresponding to this property bought.

Q. After you have sold that lard on March 29th that you bought on March 25th and credited up Mr. Foote the difference in ledger

account, for whose account did you have that lard bought—the Oldershaw lard—your own account?

A. No, sir.

Q. Whose account?

A. For some other customer.

Q. Who was that?

A. Couldn't tell without looking it up.

614 Q. If you sold it on March 29th to W. & J. Rogan, who was that lard sold for after March 29th?

A. That red-ink entry shows a settlement for account of Foote until it was settled.

Q. Until it was settled?

A. Yes, sir.

Q. When he bought it and sold it didn't that end his connection with it?

A. Practically it did; shows the profit or loss in it.

Q. That was all the interest he had in it?

A. Yes, sir.

Q. That sale you made to W. & J. Rogan you cancelled, didn't you, on April 10th against a purchase you had made for F. Bishop, didn't you?

A. Yes, sir.

Q. That is, you had a purchase made for F. Bishop and you cancelled the purchase you had made for F. Bishop with a sale you had made for Foote, didn't you?

A. Yes, sir.

Q. And that is all there was to that, isn't it?

A. Yes, sir.

Q. Were you present in the Tremont house in the month of November or December, 1874, at the time Mr. Hooker made the arangement with Mr. Foote to trade for him?

A. No, sir.

Q. Did you ever hear any conversation at the Tremont house between Mr. Foote and S. G. Hooker?

A. No, sir.

Q. You knew, didn't you, that Mr. Foote was a customer of the firm by virtue of his acquaintance with Mr. Hooker, didn't you?

A. Yes, sir.

Q. That, as we treat matters of trade, Hooker got Foote into the office to trade. That is it, isn't it?

A. Yes, sir.

Q. And you didn't hear their original understanding?

A. No, sir.

(Objected to, the whole course of examination, because it is immaterial and improper, and that he assumes there is an understanding. Objection overruled, and exception taken.)

Q. You were not interested in the firm?

A. No, sir.

615 Q. You were a book-keeper?

A. Yes, sir.

Q. And when you speak of no complaint from Mr. Foote you mean to say, don't you, that you didn't hear him make any?
A. Yes, sir.
Q. That is all you know about it?
A. I never heard him make a complaint.
Q. You don't know what he may have said to Mr. Hooker and Mr. Lincoln when you were not present, do you?
A. No, sir; I couldn't say.
By Mr. RIDDLE: He was about the office frequently?
A. Yes, sir.
Q. During the period covered by these transactions?
A. Yes, sir.
Q. And knew what the state of his account was there all the time?
A. Yes, sir.
Q. Never complained of it?
A. Never made any.
Q. Or ever find any fault with it?
A. No, sir.
Q. Did he ever say that he had been gambling to anybody in the office in your presence?
A. I never heard of his using the word.
Q. Did he ever talk in the office about having speculated in differences?
A. No, sir.
Q. Did you never have any conversation with him in regard to his transactions there?
A. Transactions on the board?
Q. Yes.
A. Yes, sir.
Q. Did he ever say to you that he was a speculator in differences or a gambler in grain or differences?
A. No, sir.

616 JULY 22ND, 1886.

ARTHUR DRIGGS, being first duly sworn, testified on behalf of complainants as follows:

By Mr. RIDDLE: Give your name, please.
A. Arthur W. Driggs.
Q. Where do you live?
A. 509 West Adams street, Chicago.
Q. What is your business?
A. Book-keeper.
Q. How long have you been book-keeper?
A. Have been on the general books about 6 years; on parts of the books for 13 years.
Q. With whom have you been employed and done book-keeping during that time?
A. Baldding & Company, Kelly & Baldding; all of them board of trade firms.
Q. All commission men doing business on 'change?

A. Yes, sir.

Q. Are you familiar with the methods and manner of doing business on 'change and of the way books are kept showing accounts of transactions had by commission merchants for customers on the board of trade?

A. Tolerably so; different offices have different systems; have seen several systems.

Q. Do you consider yourself an expert book-keeper in such matters or capable of determining whether books are properly kept or not?

A. Yes; I think so.

Q. I will ask you if you have examined that book which you have in your hands.

A. I have.

Q. What is the book?

A. It is an option book labeled Option book kept by the firm of S. G. Hooker & Company; purports to cover the transactions between July 11th, 1874, and May 29th, 1876.

Q. Have you examined it?

A. I have.

Q. Did you prepare this Exhibit "O"?

A. I did.

Q. It is in your handwriting?

A. Yes, sir.

Q. What is that paper?

617 A. It is a copy of the option book of S. G. Hooker & Company, so far as it relates to the transactions said to have been made for the account of Ira Foote, except some 9 items, the first 2 pages, which are items that I made up from accounts that I found in their office, and made up as nearly to the form that they would have made them as I could; didn't find them on their books.

Q. Exhibit O, then, is a copy of the accounts of transactions made by S. G. Hooker & Company for Ira Foote?

A. Copy of their option book—of the record—yes, sir.

Q. I will hand you those papers and ask you to state what they are. Are they in your handwriting?

A. They are, and were made by me.

Q. For what purpose were they made?

A. I was asked to ascertain, if I could, if there were any substitutions or any means of showing by the option book a contract in substitution of one that had been settled, and I made these papers for that purpose, showing substitution of parties.

Q. From what source did you make the papers?

A. Made them entirely from the option book.

Q. The papers are marked wheat and corn—two of them?

A. Two of them are; yes, sir.

Q. And one is marked lard?

A. Yes, sir.

Q. In what manner does the book you hold in your hand, the option book of S. G. Hooker & Company, purport to have been kept

whether in a regular and systematic manner, as a book for that purpose?

A. It was clearly kept; yes, sir.

Q. Was it intelligently kept?

A. Yes, sir.

Q. From that book would you be able to discover at any time the condition of the account of Ira Foote as related to the firm of S. G. Hooker & Company, and be able to state the condition of the account of Mr. Foote at any time from that book?

A. Yes, sir. Of course, in connection with the ledger this
618 would show the transactions that were open for his account.

Q. And made for his account?

A. And made for him. Of course it would not show any cash transactions paid to him or by him.

Q. You would be able to discover from that book the true state of any purchase or sale made for his account at any time?

A. Yes, sir.

Q. What does the book show in regard to those purchases and sale- made by that firm for Mr. Foote, in respect to their character as gambling contracts?

(Objected to. Objection sustained.)

Q. Does the book as kept show the regular purchases and sales of property for account of Foote made in the ordinary course of business on the board of trade?

A. Yes, sir.

Q. Does it appear from that book that the firm of S. G. Hooker & Company carried on any transactions between themselves as a firm and Mr. Foote?

A. No, sir; I don't think there is a single one that way—a single one of the items; don't remember of any.

Q. The transactions all appear to have been made legitimately as far as the book shows?

(Objected to. Objection sustained.)

Q. Were you able to find from the books, Mr. Griggs, whether or not any transactions which were made for Mr. Foote and before the maturity of the contract were settled and some other party was substituted in place of the party to the contract who might have been released by the settlement?

(Objected to. Objection sustained.)

By Mr. RIDDLE: Complainant in the original bill offers to show by this witness that he has made a careful examination of the
619 books of S. G. Hooker & Company, so far as they relate to transactions had on account of Ira Foote, and that he has from those books copied statements which have been offered in evidence, and that such statements purport to give a succinct history of all the transactions had by the firm of S. G. Hooker & Company for Ira Foote in relation to the purchase and sale of property on the board of trade and made under and in pursuance of the rules of the

board of trade of the city of Chicago, and that the books of account of S. G. Hooker & Company indicate that all of the transactions were made fairly and legitimately in the ordinary and usual course of business, and that there is nothing in the accounts between Ira Foote and the firm of S. G. Hooker & Company to indicate that there was any gambling in grain or provisions, or any agreement, purpose, or practice between S. G. Hooker & Company and Ira Foote to speculate in differences between the purchase and selling price of property dealt in on the board of trade, and that such books further indicate that proper substitutions of one contracting party for another in every instance where the party was released from the obligation to perform any contract — made by the firm of S. G. Hooker & Company for account of Ira Foote, and that whenever one party was substituted for another in any contract the substitution was made in accordance with commercial usage and for the commercial convenience of the contracting parties, Mr. Foote included.

By Mr. BISBEE: Objected to, as it is improper, because it is a conclusion of the witness, and it is an improper way of putting in testimony concerning books in any respect or under any circumstances.

By the MASTER: The master sustains the objection.

To which ruling of the master counsel except.

The taking of further testimony is adjourned to Friday, July 23rd, 1886, at 2 o'clock p. m.

620 JULY 27TH, 1886.

Counsel present as before.

J. IRVING PEARCE, being first duly sworn, testified on behalf of defendant in cross-bill as follows:

By Col. JACKSON: What is your name?

A. J. Irving Pearce.

Q. How long have you resided in Chicago?

A. 35 years; this is the 35th year.

Q. How long were you president of the Third National Bank of Chicago?

A. More than 12 years.

Q. Were you acquainted with the firm of S. G. Hooker & Company?

A. Yes, sir.

Q. How long were you acquainted with that firm?

A. From its existence.

Q. Were they customers of the Third National bank?

A. Yes, sir.

Q. How long were they customers of the Third National bank?

A. I couldn't state; for a number of years.

Q. Were they customers in the year 1876?

A. Yes, sir; up to about the 1st of July.

Q. Were they indebted to the Third National bank in 1876?

A. Yes, sir.

Q. Was that indebtedness settled in any way?

A. Never has been settled.

Q. Was there any settlement or adjustment made between S. G. Hooker & Company and the Third National bank at that time?

A. Settled in December, 1876, by note.

Q. State how that settlement was made and what were the circumstances attending the same.

A. They were overdrawn for a very large amount, for which the bank held collaterals of various kinds—hams and lards and grain and provisions of various kinds—and in December, the last
621 days of December, I induced them to close up the matter and get it in note, and give me additional securities. Securities had been depreciating, and we saw the necessity of having additional securities. I wanted to close up the business for the bank.

Q. I hand you a note which has already been introduced in evidence, signed by S. G. Hooker & Company, for $13,912.97, dated Chicago, December 30th, 1876, and state when that note was delivered to you.

A. Upon the day of its date.

Q. You have said in your testimony just previous to this that the settlement was made on the last day of December. Do you mean the last day or December 30th?

A. The last days, I said. On December 30th, the date of this note, was the day it was handed to me.

Q. State the circumstances attending the delivery of that note to you. By whom was it delivered?

A. The note was delivered to me by Mr. Lincoln; Mr. Lincoln and a man by the name of Paschall, attorney for S. G. Hooker or for Hooker & Smith; he was acting for him as an attorney.

Q. Who do you say delivered the note to you?

—. Mr. Lincoln and Mr. Paschall came together. Mr. Lincoln gave me the note by Col. Jackson. I will introduce these two notes in evidence, and they are as follows:

"$5,000.

On the first day of July, 1877, the estate of Ira Couch, deceased, promises to pay to the order of Ira Foote, at their office in Chicago, Illinois, five thousand dollars, with interest at 8% per annum, for value received.

Chicago, July 1st, 1876.

622 WILLIAM H. WOOD,
CAROLINE E. COUCH,
JAMES COUCH,
Trustees of the Estate of Ira Couch, Deceased."

On the back is endorsed: "I hereby guarantee the payment of the within note for, value received, at maturity. Ira Foote, by James H. Rice, attorney-in-fact."

Also endorsed: Judgment rendered on the within note in the circuit court of the United States for the northern district of Illinois, April 17th, 1882, against Ira Foote. W. H. Bradley, clerk."

"$5,000.

On the first day of October, A. D. 1877, the estate of Ira Couch, deceased, promises to pay to the order of Ira Foote five thousand dollars, with interest at the rate of 8% per annum, for value received.

Chicago, July 1st, 1876.

WILLIAM H. WOOD,
CAROLINE COUCH,
JAMES COUCH,
Trustees of the Estate of Ira Couch, Deceased."

Endorsed as follows: "I hereby guarantee the payment of the within note, for value received, at maturity. Ira Foote, by J. H. Rice, attorney-in-fact."

Also endorsed as follows: "Judgment rendered on the within note in the circuit court of the United States for the northern district of Illinois, April 17th, 1882, against Ira Foote. W. H. Bradley, clerk."

Q. Please look at the two notes which have just been put in evidence and state whether those notes were delivered to the
623 Third National Bank of Chicago, and when.

A. Those were delivered to the Third National bank on the date of that note, the 30th day of December.

Q. Who brought those notes to you?

A. Mr. Lincoln.

Q. Mr. Pearce, it was stated by Mr. Hooker, in his prior testimony, that the words "two notes signed by Couch-estate trustees" was written upon these notes subsequent to the delivery of them; please state whether that is a fact.

A. That note was brought to me without that on there.

Q. When was that note brought to you?

A. The same day, on the 30th. I refused to accept the note without the additional collateral. I demanded all the notes of the Couch estate that they held. Mr. Lincoln said the estate owed him; he was the largest creditor; he had a right to hold some of them. I told him it was safe in my hands, and I demanded they should bring it. Mr. Lincoln went back and brought the notes that same day, and that was added to it at that time.

Q. Then before that note was delivered to you the words——

A. I accepted that note; that was added to it.

Q. And these two notes were presented to you at the same time that note was delivered?

A. Yes, sir.

Q. That was done on the 30th?

A. Yes, sir; 30th of December.

Q. Mr. Kretsinger has stated in his testimony, on page 171, that after he, as an attorney, had filed a bill to enjoin the collection of certain notes given by the Couch estate, including these which have just been introduced in evidence, that he had a conversation with you respecting these notes; do you remember the time when that conversation was?

A. Yes, sir.

Q. Please state when it was.

A. Mr. Hinkle had an office in the same building, and I had some business with him, and I found him in his room, Mr.
624 Kretsinger's room, and while I was in there I had a conversation with Mr. Kretsinger in regard to a summons served on my wife at Hyde Park, and said to him that I thought it was ridiculous; that my wife never had any notes of the kind, and was not in the habit of doing business that way, and I was annoyed at their going down there and serving a summons on her.

Q. Do you remember whether the Third National bank was made a party defendant in that suit?

A. It was not.

Q. Do you remember when that suit was brought?

A. Well, I know pretty near when it was. In January, I think, the summons was served on my wife—between the 15th and 18th of the month somewhere.

Q. Do you know whether you were a party defendant in that suit?

A. I do not; never had any summons.

Q. Or have any injunction served on you?

A. No, sir; never on me.

Q. When was your wife served? Do you remember?

A. As I stated, between the 15th and 18th of January. That is my recollection; might have been a day or two later than that.

Q. Before this suit was brought, then, as I understand you, the Third National bank had these notes?

A. Yes, sir.

Q. Had been delivered to it by Mr. Lincoln?

A. Yes, sir. I want to say in regard to the date of the summons on her I wouldn't be positive, because it was served upon her down there not far from that time.

Q. Mr. Kretsinger at that time in his testimony stated that you disclaimed having any interest in the notes. Did you say anything of that kind?

A. No, sir; nothing. Only the talk about my wife. He is mistaken.

Q. Did Mr. Kretsinger ask you whether the Third National bank held those notes?

A. No, sir; just conversation in a friendly way. I felt annoyed at bringing her in the matter.

625 Q. Because she was made defendant?

A. Yes, sir.

Q. Mr. Kinney has testified, on page 124 and subsequent pages, that he called upon you some time prior to Christmas and asked you if you had any Couch-estate notes or knew anything about them. Do you remember any such inquiry made?

A. I do not.

Q. On page 125 he says I went and saw Mr. Pearce and asked him if he had any such notes (referring in his previous answer to

the Couch-estate notes), and he said not; furthermore, that he didn't know anything about any such notes.

A. I couldn't have said any such thing, for I did.

Q. You did know about such notes?

A. Yes, sir.

Q. At that time you didn't have them?

A. I didn't have them.

Q. The notes were delivered to you subsequently?

A. Yes, sir; after that time.

Q. How long had you heard about the Couch-estate notes?

A. From the time of their settlement.

Q. The time of whose settlement?

A. Settlement with Mr. Rice for the Couch-estate notes, of Mr. Foote's indebtedness.

Q. You knew the notes had been given over to Mr. Foote?

A. Yes, sir.

Q. Did you know when the notes were given over by Mr. Foote to S. G. Hooker & Company?

A. I knew about it at the time; Mr. Hooker was away at the time of the settlement, and he complained about throwing off some interest on some portion of the account; told me all about taking the notes.

Q. They were given by Mr. Foote, in settlement of his account with S. G. Hooker & Company, to S. G. Hooker & Company?

A. Yes, sir; they had been delivered to Mr. Lincoln, so Mr. Hooker told me, after they said they were going to——

626 Q. On page 130 of Mr. Kinney's testimony he says: "I asked him (referring to yourself), just as I have stated, if he had any of those notes of the Couch estate. He said he had not and didn't know anything about them. In a few moments he got up and went into the office; don't know whom he saw, whether Mr. Parsons or Mr. Smith; but he came back and said he had no such notes and didn't know anything about them." State, if you please, whether you remember any such conversation.

A. Don't remember any such transactions. What time did he say that was?

Q. A few days before Christmas.

A. Mr. Parsons had been dead long before that.

Q. When did Mr. Parsons die?

A. He was buried on the 3rd of November, so I couldn't talk to him very well.

Q. If the notes had been delivered to the Third National bank, would you not have known of it?

A. Yes, sir.

Q. Who had charge of those matters? In whose province were they—yours or the cashier's?

A. They would have been received through me.

Q. You had exclusive charge of those matters?

A. I had those matters always in settling accounts, but I didn't have the notes at that time.

Q. On page 125 Mr. Kinney also says, in answer to an inquiry

whether he had a subsequent conversation with you about those notes: "Mr. Pearce stopped me on the street some time afterwards—can't tell exactly whether it was 1, 2, or 3 weeks—and asked me what there was about those notes. I told him I didn't know anything about it. I was simply sent there on an errand." Do you remember having any conversation of that kind with Mr. Kinney?

A. No, sir.

Q. If you had any such conversation would you be likely to remember it?

627 A. I should think I would remember it. I haven't any recollection of anything of the kind.

Q. On page 144, in the testimony of Mr. Rice, he says that directly after the injunction was served, referring to the suit already spoken of, I was going to Tom Andrews' to get my lunch. As I got along by the Third National bank Mr. Pearce came out, and we walked along down to the restaurant, and I asked him to go in and get lunch with me. We went in and sat down, and he commenced on me about that injunction that had been served upon him, and he thought it especially severe that an injunctien had been served upon his wife in regard to the Couch-estate notes, as he said he knew nothing about the notes. He had not the notes, and he knew nothing about them, and he didn't see why he should be bothered about it. He seemed to be particularly anxious about Mrs. Pearce being served by an officer. Please state whether you ever had any conversation of the character detailed by Mr. Rice.

A. I think I had some such conversation, but I certainly didn't say to him that I knew nothing about the notes. I did tell Mr. Rice that I thought it was a great annoyance, unnecessary annoyance, to my wife. Never was any occasion for sending an officer down there and serving summons on her that time. I didn't know there had been a notice served on me, and had no occasion to make any such remark, and didn't make it.

Q. Did you state at that time that you had not the notes?

A. No, sir; I did not, for the bank held them at that time. That conversation, in my recollection, was at least a month or 6 weeks after the summons on my wife.

Q. After your wife had been served with the summons?

A. Yes, sir.

Q. Did Mr. Rice ask you at that time whether the Third National bank held those notes?

A. No, sir; he didn't.

Q. On page 162 of Mr. Rice's testimony, in answer to the

628 inquiry, "Did you say that Mr. Pearce stated that he didn't have the Couch-estate notes?" he says, "Yes, sir; didn't have them or didn't know anything about them; for that reason he thought it was unnecessary to disturb him." Please state whether you ever made such a reply to Mr. Rice.

A. I did not I said that my wife didn't have the notes or know anything about them. They served her with a summons on a matter she never knew anything about in any way; didn't say anything about myself.

Q. On page 63 of Mr. Hooker's testimony he says, "The next day after the injunction Mr. Pearce sent for me and said, What about the Couch-estate notes? I said, I never saw them; I thought you had them. He said, I didn't know about them. He said, If I am going to be assignee I want all the assets. I said, I will go and see Mr. Lincoln. I said, Mr. Pearce says you have not surrendered these notes to him at all." He continued further, but that is all that is necessary. Please state whether you requested Mr. Hooker to call upon you at the time stated in his answer, fixing the day after the injunction.

A. No, sir; I couldn't have stated anything of the kind, for the assigment was not made until the 28th day of February; couldn't have said any such thing and never did say any such thing. At the time I was trying to get the notes Mr. Hooker urged me——

Q. That was prior to December 30th?

A. Yes, sir. Urged me to get them for fear Mr. Lincoln might make improper use of them and settle with the estate for less money, and he urged me to get them in—all of them. That is the only time we had any conversation in regard to getting the notes in, and I did try to get them in, and I got two of them, all I could get; couldn't have any such conversation occurred.

Q. At the time of the assignment were any of the Couch-estate notes delivered to you as assignee?

629 A. Yes, sir; one.

A. One note was delivered to you then?

A. One note. There were four notes named in the assignment; two in the hands of the Third National bank, one in the hands of Tenneys, Flower & Abercrombie, attorneys, and the other was delivered to me with the assignment.

Q. In the same answer of Mr. Hooker, on page 64, after stating his conversation with Mr. Lincoln, he says that he, referring to Mr. Lincoln, goes down to Mr. Pearce and surrenders, I understand, 2 of the longest of the notes, and Tenney and he claimed the balance and fought them all the way through.

Q. That was after this injunction was served?

A. Yes, sir. Please state whether that is the truth.

A. It was not true. I state, as before, two of the notes were in the hands of the Third National bank before that, and one note was delivered to me at the time of the assignment, and the assignment showed there was one in the hands of the attorneys.

Q. On page 60 Mr. Hooker, in his answer, states as follows: "Said I, I will go to New York to-morrow. Said he, referring to Mr. Lincoln, let me go and see Mr. Pearce; he was then our banker. Mr. Pearce told Mr. Lincoln, I think you better send Hooker to New York; everybody has sympathy for him; they don't like Lincoln; they think Lincoln is not honest, which is the truth. So I packed my bag and went to New York, and that is where I was making that settlement with Fowler Brothers when this arrangement was made here." Did you have any such conversations or make any such statement respecting Mr. Lincoln?

A. No, sir; didn't know he went to New York.

Q. Did you, at any time in the year 1876 or 1877, have any conversation with Mr. Hooker respecting the validity of the Couch estate notes?

630 A. Yes, sir.

Q. What year was it?

A. It was after this injunction. As for the validity of the notes, never was brought in question; never heard there was ever a question till after that injunction suit was commenced. I made inquiry after that, and after I heard what Foote claimed, that was the first I ever knew anything about it at that time.

Q. Did Mr. Hooker at that conversation or any other conversation ask you for the payment of the money in order that he would testify in a certain way?

A. Yes, sir; he did.

Q. Just state what that conversation was.

A. It was in March or April, 1877, Mr. Hooker came to me and asked me to give him $6,000 myself as assignee—it was after the assignment—claiming that there would be that much coming to him from the Couch-estate notes if they were collected, and more, too; that his wife had been offered $10,000. He said if I would give him that money he would go on and help collect those notes; if I didn't, he would defeat it. I asked him how it was—how he could defeat it. He says, The notes are good. Yes, I said, you wouldn't *purger* yourself. He answered the question, If you don't do that I will defeat it. I said to him I had no money, anyway; if I had I couldn't give it to him. The only way was for him to see the creditors if they wanted to pay him money in advance. I advised him to go to Mr. Lincoln, who was the largest creditor, and see him, and he said he would go over, and did go over. I asked him afterwards with what success, and he said Mr. Lincoln had abused him and called him vile names, and followed him over the Clark-street bridge, abusing him, and he would get even.

Q. Did he state who offered him or his wife the $10,000?

A. No, sir; he didn't say that.

631 By Mr. THOMPSON:

Q. You are the assignee of S. G. Hooker & Company, are you?

A. Yes, sir.

Q. State if this is a copy of the assignment or if it is the original assignment made by you.

A. This is the original.

Q. And the exhibits attached thereto?

A. Yes, sir.

By Mr. THOMPSON: I will offer this assignment in evidence, which is as follows:

This assignment, made the 28th day of February, 1877, between Stephen G. Hooker and George D. Lincoln, copartners under the name, firm, and style of S. G. Hooker and Co., of the city of Chicago, in the county of Cook and State of Illinois, parties of the first

part, and J. Irving Pearce, of the same place, party of the second part:

Whereas the said copartnership is justly indebted in sundry considerable sums of money, and has become unable to pay and discharge the same with punctuality or in full, and the said parties of the first part are now desirous of making a fair and equitable distribution of all their property and effects among their creditors:

Now, therefore, this indenture witnesseth: That the said parties of the first part, in consideration of the premises and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, assigned, transferred, and set over, and by these presents do grant, bargain and sell, release, assigns, transfer, and set over, unto the said party of the second part and to his heirs and assigns forever all and singular the lands, tenements, hereditaments, and all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, and property of every name and nature whatsoever of the said partys of the first part:

632 To have and to hold the same and every part and parcel thereof, with the appurtenances, to the said party of the second part, his heirs, executors, administrators, and assigns—

In trust, nevertheless, to and for the following uses, intents, and purposes—that is to say: That the said party of the second part shall forthwith take possession of all and singular the lands, tenements, hereditaments, property, and effects hereby assigned, and sell and dispose of the same for the best prices which he shall be able to obtain, and to convert the same into money, and shall also collect all and singular said debts, due bills, bonds, notes, amounts, claims, demands, and choses in action, or so much thereof as may prove collectable, and thereupon execute, acknowledge, and deliver all necessary conveyances and instruments for the purposes aforesaid, and by and with the proceeds of such sales and collections the said party of the second part shall first pay and disburse all the lawful expenses, costs and charges, and commissions of executing and carrying into effect this assignment, and by & with the residue of net proceeds and avails of such sales and collections the said party of the second part shall, if the residue of such proceeds is sufficient for that purpose, pay all the copartnership debts and liabilities now due and to become due from the said parties of the first part, and which are particularly described and mentioned in the schedule annexed, marked Schedule B, together with all interest monies due and to become due thereon, and if the residue of the said proceeds shall not be sufficient to pay the said debts and liabilities and interest monies in full, then to apply the same, so far as they will extend, to the payment of the said debts and liabilities and interest moneys proportionately to their respective amounts.

633 II.

By and with the residue and remainder of said net proceeds and avails, if any there shall be, the party of the second part shall pay

the same over to the said parties of the first part, share and share alike.

And, for the better execution of these presents and of the several trusts thereby reposed, the said parties of the first part do hereby make, nominate, and appoint the said party of the second part the true and lawful attorney, irrevocable, of them and each of them, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which can or may be necessary in the premises as fully and completely as the said parties of the first part or either of them might or could do were these presents not executed, and attorneys, one or more, under him to nominate and appoint, with full power of substitution or revocation, hereby ratifying and confirming all and everything that our said attorney or his attorneys shall do or cause to be done in the premises; and the party of the second part hereby accepts the trusts created by these presents, and covenants that he will faithfully perform the same.

In witness whereof the respective parties hereto have hereunto set their hands and seals the day and year first above written.

S. G. HOOKER. [L. S.]
GEO. D. LINCOLN. [L. S.]
J. IRVING PEARCE. [L. S.]

Statement of Resources of S. G. Hooker and Geo. D. Lincoln, under the Firm Name of S. G. Hooker & Co.

634 Assets.

Book Accounts.

Horace Aylwin, Port Hope, Ont.	2,046 17	
Thos. M. Ottley, Chicago, Ill.	641 45	
W. H. Sanborn, Boston, Mass.	3,419 96	
Templeton & Hastings, Fairfield, Iowa	6,002 99	
A. A. Jacobs, Boston, Mass.	10,387 94	
D. W. Templeton, Fairfield, Iowa	156 30	
		22,654 81

Bills Receivable.

E. S. Vinden Co. note held by 3rd Nat. bank	1,786 12	
J. L. Alberger notes held by 3rd Nat. bank	5,547 69	
Couch-estate notes " " "	10,000 00	
Couch-estate notes held by Tenneys, Flower & A.	5,000 00	
Couch-estate notes	5,000 00	
Geo. A. Sackett notes	412 45	
H. Aylwin acceptance	4,000 00	
		31,746 26
		54,401 07

"B."

Book Accounts Unsecured.

Sept. 2, '76,	F. Bishop, Albany, N. Y.	35 00
May 3, "	S. L. Steel, Mt. Pleasant, Iowa	382 55
" 31, "	J. J. Hall, Mt. Pleasant, Iowa	424 20
" 31, "	A. Dayton, Momence, Ill.	547 92
July 9, '75,	Geo. Kaley, Albany, N. Y.	390 73
Feb. 26, '77,	G. D. Lincoln, Chicago, Ill.	9,093 10
		10,873 50

635 *Secured Accounts and Bills Payable.*

Aug. 31, '76,	B. Hancock, Chicago, Ill.	595 19
Dec. 31, '76,	Third National bank, about	6,618 06
Feb. 26, '77,	Tenneys, Flower & Abercrombie	1,637 28
		$19,724 03

Q. State when that assignment was delivered to you.

A. On or about the date 28th of February, 1877.

Q. State whether the estate has been closed.

A. It has not.

Q. State whether you accepted the assignment at the time it was delivered to you.

A. Yes, sir; I accepted it and signed it here.

Q. You have paid some dividends to the creditors?

A. Yes, sir.

Q. How much?

A. About 30 or 33%; altogether, 33%.

Q. Did you pay to the Third National bank a dividend upon the claim of the bank?

A. Yes, sir; I paid it under protest.

Q. What was the amount of that payment to the bank?

A. Between $1,500 and $1,600.

Q. $1,570.45?

A. Yes, sir; that is the amount.

Q. State under what circumstances you paid that and what claim you make now in regard to it, if any.

A. I claim that it is the bank's business to realize out of the collaterals. I had no right to pay it, and it was paid under protest.

Q. And you claim the right to recover this amount of money paid under protest?

A. Yes, sir.

Q. Will you state what amount of expenses you have incurred as assignee over what you have received?

A. It seems to me it is between $400 and $500. I can't remember that. I made a statement here once.

Q. State in a general way what expenses you have incurred.

636 A. Attorneys' fees and court records and the like, and I owe considerable yet to attorneys.

Q. You may state about the note of the Couch estate, which was delivered to you at the time of the assignment, and the litigation that resulted in regard to that note.

A. I was sued in trover, and judgment was given against me individually and I paid it.

Q. For the value of that note?

A. For the value of that note.

Q. And you paid it?

A. I have paid that, and since have collected the note.

Q. You have since collected it?

A. Yes, sir; and there was not a sufficient amount to pay the judgment that I paid.

Q. What was the difference between the judgment that you paid and the amount you received on collection?

A. I think somewhere near $200; between $100 and $200.

Q. Will you make out a *littel* statement of the amount you collected and any other expenses you have incurred for attorneys' fees?

A. Yes, sir.

Q. Have you any other assets, as assignee, out of which there is any money to be collected belonging to this estate?

A. Very little in value. Perhaps a couple of hundred dollars might be realized; little more than that; not $300.

Cross-examination by Mr. BISBEE:

Q. The suit you spoke of in answer to questions by Col. Thompson was a suit in trover, was it not, brought by Ira Foote in the circuit court of Cook county against you for the value of the 5,000 and some odd dollars note that was turned over to you by S. G. Hooker & Company when they made their assignment to you; that is the note, isn't it?

A. I don't remember the court.

Q. It was before Judge Moran?

A. Yes, sir.

637 Q. And that suit went from the circuit court to the appellate court, didn't it, and was affirmed there?

A. I think so.

Q. And it went from the appellate court to the supreme court of this State, and was affirmed there?

A. Yes, sir.

Q. And you contested it all the way through—in the three various courts?

A. Yes, sir.

Q. And you had to pay the judgment, which amounted to between $8,000 and $9,000, didn't you?

A. Yes, sir.

Q. And you collected the note that was turned out to you by S. G. Hooker & Company of the Couch estate?

A. Yes, sir.

Q. And the difference between the note that you collected and what you had to pay on the execution was between $100 and $200,

which sum you will name and furnish to the reporter—the exact sum.

A. Yes, sir.

Q. And the claim was in all the courts in relation to that note, was it not, that it was given to S. G. Hooker & Company in payment of a gambling debt? That was the claim, wasn't it?

A. I think that was it.

Q. And it was upon that issue that the case was fought through all the courts?

(Objected to.)

A. I presume that was it. Of course I was not in court.

Q. When did you say Mr. Parsons, the cashier of the Third National bank, died?

A. He was buried on the 3rd of November, 1876.

Q. And died two or three days before that?

A. Yes, sir; can't tell exactly.

Q. You have spoken in your direct examination of an injunction suit. Do you refer to a suit that was brought by Ira Foote in either the superior court of Cook county against you to enjoin the collection by you of the two Ira Couch estate notes of $5,000 each,
638 which have been put in evidence here by Col. Jackson?

A. I don't know what suit it was or who commenced it. I know there was an injunction served upon my wife or a summons to prevent her collecting some notes against the Ira Couch estate.

Q. Isn't this the fact, Mr. Pearce, that an injunction was obtained against you, and the service was made by leaving a copy with your wife at your house for you? Isn't that the fact?

A. No, sir; if they did I never saw it.

Q. Are you sure that is not the fact?

A. Yes, sir.

Q. Sure of that?

A. Yes, sir; I have no recollection of ever seeing one served on me. There was one served on my wife.

Q. You say that she was made a defendant in that suit?

A. Yes, sir.

Q. And not you?

A. If it was I didn't see the summons.

Q. How do you know she was a defendant in the suit?

A. Because it read so. She said so.

Q. Who said so?

A. Mrs. Pearce, and I saw it; don't remember my name being in it at all.

Q. Then she was the defendant, but, so far as you are advised, not yourself?

A. They didn't serve any on me.

Q. Was the Third National Bank a defendant?

A. No, sir.

Q. Nobody but your wife?

A. At least I was president of the Third National bank, and

would have been likely to have seen it if it had been served on the Third National bank?

Q. When did the Third National bank go into the hands of a receiver?

A. On about the 29th of November, 1877.

Q. And you were president up to that time?

A. Yes, sir; closed its doors on the 21st day of November, 1877; receiver was appointed within a week.

639 Q. You have a distinct recollection, have you, of all the conversations you had with Mr. Hooker, Mr. Rice, and Mr. Kinney and Mr. Kretsinger in 1875 and 1876?

A. Didn't have any in 1875 and 1876.

Q. Well, then, in the early part of the year 1876?

A. Didn't have any in the early part of 1876.

Q. Well, at any time in 1876?

A. Don't remember any conversation with any of them in 1876.

Q. Did you have any in 1875?

A. Don't remember of having any; no, didn't have any in 1875.

Q. And you didn't have any conversation with any of those gentlemen in 1875 and 1876?

A. No; not to my recollection.

Q. All you had, then, was in 1877?

A. Never had any with Mr. Kinney at all, to my recollection.

Q. No conversation?

A. Not to my recollection, never remembered it.

Q. If you had any you have forgotten it?

A. Don't think I have forgotten.

Q. If you did have any you have forgotten it?

A. If I ever had any I have forgotten it. The inconsistency of his answer makes me think I never did.

Q. So that Mr. Rice and Mr. Kretsinger and Mr. Kinney and Mr. Hooker, all their statements in relation to conversations with you about these notes are incorrect, are they, Mr. Pearce?

A. The conversations with Mr. Rice are as I stated in my recollection. I know that I never said any such thing. I didn't have any, I say, with Mr. Kinney. As far as Mr. Hooker's statements are concerned there is nothing in them; couldn't possibly have occurred, for they had not made the assignment at all and didn't till the 28th day of February.

Q. And it is not true, then, so far as Mr. Kinney is concerned, you didn't have that?

A. Didn't have that, to my knowledge.

640 Q. Then it is true, isn't it, that the statements of these 4 gentlemen in testimony here are untrue?

A. That is a question for you — decide. As far as Mr. Rice's statements are concerned of having a conversation, I did have a conversation, but he is mistaken.

Q. In whose handwriting is that part of the note down to the middle of the last line?

A. That I couldn't tell you.

Q. Don't you know who wrote it?

A. No.

Q. In whose handwriting are these words: "Notes signed by Couch-estate trustees"?

A. Well, I couldn't say. That was written in my office either by Mr. Parsons or myself; some one wrote it.

Q. It is not in your handwriting—those words?

A. Looks like my writing.

Q. Is it your handwriting?

A. Wouldn't like to swear it is. I will say this, I know that was written——

Q. I only ask you about the handwriting. You say, then, that those words, "notes signed by Couch-estate trustees," is not in your handwriting?

A. I wouldn't like to say. There are some things about it—some of the letters there look like my own.

Q. Give your best belief about it, then, Mr. Pearce.

A. I should think it looks like mine—might be Mr. Parsons' handwriting; our handwriting is something alike. Looks like mine, but I wouldn't like to swear it was.

Q. You wouldn't swear who did write it, then?

A. Wouldn't be positive who did it.

By Mr. JACKSON: When was the insertion made, if you know?

By Mr. BISBEE: Objected to. I haven't asked him anything of the kind.

641 By the MASTER: He may answer the question.

A. On the same day, before the acceptance of the note.

—. On page 92 of Mr. Hooker's testimony he says that a certain conversation took place between him and yourself after the injunction was served, and, in response to the interrogatory as to who was present at the time, says, Nobody except Mr. Pearce and I; I guess, Mr. Parsons. Please state whether Mr. Parsons was alive at the time the injunction was granted.

A. No, sir; he was dead.

Q. He died in what year?

A. In 1876.

Q. What month?

A. About the first of November, 1876.

642 JULY 27TH, 1886.

JOHN T. GELTMACKER, being first duly sworn, testified on behalf of defendants in cross-bill as follows:

By Mr. THOMPSON: What is your name?

A. John T. Geltmacher.

Q. Do you reside in Chicago?

A. Yes, sir.

Q. State how you were employed from January, 1875, to June, 1876.

A. In the capacity of executing trades, and also keeping certain portions of the books, such as purchases and sales, and man-of-all-work around the office, except the professional book-keeping.

Q. For whom?

A. S. G. Hooker & Company.

Q. You made purchases and sales on the board of trade?

A. Yes, sir; executing orders.

Q. Did you buy and sell property during that time for Ira Foote?

A. I executed orders that were for his account; yes, sir; at different times.

Q. In the way of buying and selling?

A. Yes, sir.

Q. What kind of goods?

A. Well, most anything that he traded in; I think corn, and I don't know—I think probably he may have traded some in
643 wheat. Corn and lard were his forte—corn and lard principally. Don't remember whether he ever traded in wheat or not.

Q. State whether you had any special instructions in regard to trades for Foote during that time.

A. In regard to Mr. Foote as compared with other customers?

Q. Yes.

(Objected to unless it specifies who they came from.)

Q. From Mr. Foote or from S. G. Hooker & Company?

By Mr. BISBEE: So far as they came from Mr. Foote, I don't object; so far as they came from S. G. Hooker & Company, I do.

A. From S. G. Hooker & Company I never did; from Mr. Hooker personally. Mr. Hooker said he was going to take Foote in hand and make some money for him, and not to execute any order that Foote might give me unless sanctioned by him. I never executed an order for Mr. Foote without Mr. Hooker sanctioned it. I am speaking now of S. G. Hooker, not S. G. Hooker & Company.

Q. State what sort of contract you made for Mr. Foote in buying and selling property for him.

(Objected to—what sort of contracts, as that calls for an opinion.)

Q. Did you buy and sell property for Mr. Foote?

Objected to as leading.

644 Q. What did you do on the board of trade for Mr. Foote and how did you do it?

A. Well, I executed any orders for Mr. Foote's account just the same as I would any other order that was given me.

Q. How did you do it? If you had an order to buy or sell, what was the proceeding?

A. I would go into the crowd and offer to buy or sell, as the case may be, and the members of the board with whom I traded would accept or reject my offers. If I offered to buy and the price suited them I would make the purchase or sale, as the case may be, just the same as I would for anybody else.

Q. What did you have to do with the purchase and sales books for S. G. Hooker & Company?

A. Mr. Norton had charge of the books and I assisted him what-

ever way I could. I did virtually have charge of the purchase and sales books, but of course I was under Mr. Norton. All the books were under his charge; I assisted him.

Q. Did you ever make any contracts for Mr. Foote that were to be settled with differences—on the basis of differences?

Objected to as leading.

Q. State what kind of contracts you made.

Objected to.

Q. Did you receive any orders from Mr. Foote in regard to the purchase or sale of grain or other property?

645 A. Mr. Foote a number of times gave me orders to buy or sell for him. I would meet him, run down into the office during the session of the board, and Mr. Foote would be there, and he would tell me to go over on the floor and buy or sell, as the case may be, but I never executed the orders until I saw Mr. Hooker and told him what Mr. Foote wanted to do, and then, at Mr. Hooker's approval, he would tell me so and I would execute the orders.

Q. Was there any difference in the transactions for Mr. Foote and other customers of S. G. Hooker & Company?

(Objected to. First, it is leading; second, it is calling for a comparison of doing business, both of which are objectionable.)

Q. State what, if any, notice you gave to Mr. Foote of trades made for him.

A. You mean making purchases and sales for him?

Q. Yes.

A. His trades were all reported to him, either personally or by note, and generally signed by myself. If I didn't see him during the day I would leave a memorandum of what we had done for him at the Tremont house on my way home on the North Side in the evening.

Q. State whether in any of the purchases and sales there was any condition attached other than would be attached to ordinary purchases and sales.

646 *A.* (Objected to.)

Q. State what, if any, conditions were attached to any purchases or sales made by you for Mr. Foote.

A. I can only answer that one way: That I never made a trade on the floor in my life excepting trades that were governed by the rules of the board of trade; that so far as contracts are concerned, there is but one way in which trades are effected and made, always under the rules of the board of trade. It is impossible to trade any other way. There is only — way that a man can make a trade. That is under the rules of the board of trade. I never made any other excepting in that way.

Q. Do you know of the acceptance of any property, corn or wheat, bought for Mr. Foote?

A. The acceptance of the property or the trades, you mean?

Q. Yes; the delivery.
A. What we term cash?
Q. Yes.
A. Well, there is only one instance, and that I remember very distinctly. Still there are probably others that I can't recall to mind—but one, and that was quite a little amount of corn. I forget exactly what it was; some 30,000 or 40,000 bushels, possibly, that we had bought for him. Mr. Hooker's idea was that we were on the eve of a corner, and he thought it was best to carry that corn cash into the next month, and Mr. Hooker and Mr. Foote had
647 a controversy in regard to it, and Foote wanted to know how much it would cost. I figured up the insurance and storage and necessary expenses, and told him in the aggregate how much it would be, and in answer, in reply to what I had told him, he said that he could get some slabs and go out on the prairie and build a bin and store it himself for a great deal less money. That is in substance what he told me. The way in which he told me and the ridiculous part of it, of course, impressed it on my mind so I never forgot it.
Q. What was the condition of this corn at that time? Had it been delivered or paid for?
A. I think we had paid for it that day. It was the first of the month. I think the corn had been paid for, and it was a question whether to sell it for some other option and carry it or hold it as cash property. I think that was the question that was brought up which caused them to ask me to figure and find out how much it would cost to carry it. The property had been delivered, I am satisfied.
Q. Do you know of Mr. Foote's putting up any margins with S. G. Hooker & Company?
A. I don't believe he ever did. I know I asked him for them a great many times, but don't remember of his ever—no; he never gave me any. Whether he came into the office and left any margins there, of course—I am under the impression that he never did.
648 Q. Do you know of his signing any note to cover margins?
A. Yes, sir.
Q. For what amount?
A. That I forget; I wrote the note myself, but I forget the amount.
Q. State under what circumstances.
A. Well, I think it was up in the number of thousands. Mr. Foote was indebted to the concern through his transactions a number of thousand dollars, and at that time the firm of S. G. Hooker & Company were in need of money, and they came down during the afternoon. They were trying to see Mr. Foote, and he could not be found, and during the evening—well, night—8 or 9 o'clock at night, they found him and got him over in the office and explained their circumstances, condition the house was in, and he gave them—he signed the note which I wrote, for a number of thousand dollars; may have been 9 or 11 thousand dollars; I forget the amount of it. It was a stormy night, I remember, and we got Mr. Foote—he came

into the office and I got up the note. Mr. Lincoln and Mr. Hooker both were present.

Q. What was this note given for?

A. It was for indebtedness—losses made.

By Mr. RIDDLE: Were you present, Mr. Geltmacher, when the settlement between S. G. Hooker & Company and Mr. Foote was made?

A. What settlement do you refer to?

649 Q. At the time the accounts between S. M. G. Hooker & Company and Ira Foote were settled between the firm and Foote.

A. Do you mean when he transferred some notes?

Q. Couch-estate notes.

A. No, sir; I don't think I was.

Q. Did you ever have any talk with Mr. Rice about that settlement?

A. No; not about that settlement; no.

Q. You were not present when Mr. Rice turned over the notes?

A. No, sir.

By Mr. THOMPSON: Did you have any knowledge, during any of these transactions, of any special agreement between Mr. Hooker and Mr. Foote?

A. No.

By Mr. JACKSON: Did you ever make any contract or agreement on account of Ira Foote in which it was stipulated that the grain should not be delivered or received?

(Objected to because it is misleading and because it calls for a direct answer; it is improper.)

Q. Did Mr. Hooker ever give you any instructions as to the character of the trades you should make for Mr. Foote?

A. Different from any others?

Q. Any instructions; if so, what?

A. Gave me instruction to buy and sell; that is the only instructions he could give me.

By the MASTER: In regard to the character of the trades
650 you should make; if so, what were they?

A. There is only one instruction that I can receive—that is, to buy or sell—buy or sell at different options.

Q. If Mr. Hooker gave you any instructions state what they were.

A. I can't answer that question, because I don't know what you mean. There is only one instruction a man can get—that is, to buy a stipulated amount. Another instruction is the option whether it is to be delivered in August or September. My instructions were to buy or sell a certain amount, and the time—that is, the month of the year. That is all the instruction that ever I got, and the character of the instruction, and I executed those orders according to them. Probably I might have got instructions to sell it out if the market advanced or went down to close it out; don't know anything about that.

Q. Did you ever buy any puts or calls for Mr. Foote?

A. Don't think I ever did; don't think we ever traded in them.

Q. In the cross-bill of Mr. Rice in this case there is the following allegation: "That some time during the year 1875 an agreement was entered into by and between Ira Foote and said S. G. Hooker & Company, by which said Hooker & Company were to deal in differences for said Foote by purporting to buy grain and provisions upon the Chicago Board of Trade for the account and risk of
651 said Ira Foote; that all such purchases and sales so made by Hooker & Company were by the terms of the contract to be executed in some month in the future, and in no event was any purchase or sales thus to be made to remain open until the day of delivery, but were in all cases to be settled prior to the maturity of such contracts by the payment by S. G. Hooker & Company of the difference in the price of the article thus purchased or sold, based upon the market price upon the Chicago Board of Trade; that there was to be no delivery of any article thus to be purchased or sold by said S. G. Hooker & Company for said Ira Foote, and no cash or spot grain or provisions whatever was to be dealt in." Did you ever hear of any such contract?

By Mr. BISBEE: I object to that question, first, because it is improper to read from a pleading and ask the witness if he ever heard of a thing of that kind; and, second, it is incompetent to ask a leading question, direct question, calling for an answer yes or no. The only proper question in relation to the matter at issue is to ask what was done, what he did do, or what directions were given.

By the MASTER: It is proper to ask the witness if he ever heard the parties make a contract in substance such as is alleged in the cross-bill of Rice to have been made.

652 By Mr. BISBEE: Objected to because it is testified by all the witnesses that the contract was made at the Tremont house when there was no one present but Ira Foote, Mr. Hooker, and Mr. Hook; only three people present. There is not a word of testimony in the record, from beginning to end, that this witness or any other witness was present.

By the MASTER: The witness may state if a contract in substance — that alleged by the cross-bill of Rice to have been made was made to his knowledge and when it was.

A. No.

By Mr. RIDDLE: In making purchases and sales, Mr. Geltmacher, for account of Ira Foote and under the instructions of S. G. Hooker, did you make any contracts such as are described in the allegations in this cross-bill and to which Mr. Jackson has just called your attention? In other words, contracts which were to be settled merely on the basis of differences and contracts under which no property was to be either received or delivered. Did you ever make any such contracts for Mr. Hooker or under his instructions for Mr. Foote?

(Objected to because it is leading; calls for a direct answer, yes or no. Objection sustained.)

To which ruling of the master counsel for defendants in cross-bill except.

Q. State whether any contract was made on account of Ira
653 Foote in which it was stipulated or agreed that grain should not be received or delivered.

(Objected to as leading. Objection sustained; to which ruling of the master counsel except.)

Q. Did you ever make any contract for the purchase or sale of any grain for account of Ira Foote made under the directions of S. G. Hooker on the board of trade of the city of Chicago which was understood by you to be a gambling contract?

(Objected to. Objection sustained.)
To which ruling of the master counsel except.

JULY 27TH, 1886.

GEORGE D. LINCOLN recalled on behalf of defendants in cross-bill of Rice:

By Mr. JACKSON: On page 89 of Mr. Hooker's testimony he says: "Yes, sir. I will recite a conversation that occurred soon after this. I went to Mr. Lincoln after Mr. Pearce called my attention that he had never seen or received the notes under our assignment. Said I, Haven't you turned over all our assets to Mr. Pearce? No, said he, I had more money in the concern than you did, and I think I ought to be allowed to hold the Couch-estate notes, as they are the most available assets among our estate, and I want to keep them instead of turning them over." Did you have any such conversation with Mr. Hooker?

654 A. Never was any such conversation.

Q. On page 105 of Mr. Hooker's testimony he was asked, "Did Mr. Tenney ever say to you that your brother-in-law and Mr. Lincoln were going to stay in Chicago, and that he and Mr. Lincoln and your brother-in-law were going to fix up the books in some shape so that they could make a showing to the board of trade and get a settlement of 33 cents on the dollar?" The answer is, "Mr. Lincoln and Mr. Norton told me that." Please state if you ever had any such conversation or told Mr. Hooker that.

(Objected to because it was asked Mr. Lincoln when he was on the stand before.)

A. There was never anything of the kind, and I never told Mr Hooker anything of the kind.

Q. Mr. Lincoln, did Mr. Hooker ever call upon you in the year 1877 or at any other time and ask for any sum of money provided he should swear respecting the validity of these notes?

A. Yes, sir.

Q. Where did he call, and when?

A. At the Palmer house, some time in the spring of 1877, or summer.

Q. What conversation did you have with him?

A. He told me he had been to see Mr. Pearce, and Mr. Pearce sent him to me. He said he had been offered quite a large sum;
655 I think $7,000; said if I would give him $7,000 he would help us collect the notes; otherwise he would defeat our collecting them.

Q. Did he say why he had been offered that $7,000?

A. To swear on that side. He would beat them unless I paid it.

Q. What did you say to him, if anything?

A. Didn't talk very complimentary to him, if I recollect right.

Q. Well, what did you say?

A. Told him he was a rascal, thief, and liar, and everything else, I guess.

Q. You told him the truth, didn't you?

A. Yes; I told him the truth.

Q. What did he say in reply to that?

A. He said he was hard up; was having trouble with Smith, his new partner, and he had got to have some money; got to get it from some source. That was before the doctor fired him out and they suspended him from the board of trade for stealing.

By Mr. BISBEE: I move to strike out the last part of the question.

Q. What did he want this money from you for?

A. It was what he claims there would be due him.

Q. What did he say he would do, if anything, provided you paid it?

A. That he would help us collect the money on those notes.

Q. How long have you known Mr. Hooker?

656 A. I should imagine something like 18 years. I don't recollect exactly—18 or 20.

Q. Do you know what his reputation is for truth and veracity in this community?

A. Well, I think I do.

Q. What is it?

A. Pretty tough.

Q. Would you believe him under oath?

A. I wouldn't, or any other way.

Q. Do you know whether Mr. Hooker is a member of the board of trade now?

A. He is not.

Q. Do you know whether he was suspended from the board of trade?

Objected to.

A. He was suspended.

Q. When?

A. In 1877.

Q. Do you know what for?

A. Well, I know some of the allegations.

Q. What were they?

A. That he was in the habit of taking checks out of the back side of the book and filling them out and putting the money in his

pocket and not making any entry, and taking drafts out of letters that came for the firm, destroying the letters, and getting the drafts cashed.

Q. Do you know who made the allegations?

A. Dr. Smith.

Q. Was he his partner?

A. He had been his partner.

657 Recross-examination by Mr. BISBEE:

Q. You haven't been on very good terms with Mr. Hooker for the last 10 years, have you?

A. No, I rather think not.

Q. Haven't had any conversation with him, have you?

A. I don't think I have more than once or twice.

Q. The last conversation with him was when you called him a liar and thief and villain, was it not?

A. I guess that is about the last.

Q. Don't you know, Mr. Lincoln, that Mr. Hooker's membership was regularly transferred about three years ago—membership of the board of trade?

A. Yes, it was regularly transferred.

Q. To his son?

A. After he got back, after his suspension——

Q. And he was restored to membership, was he?

A. Yes, sir.

Q. Now, then, after he was restored to membership his membership was transferred regularly to his son, where it now remains, was it not?

A. Yes, sir.

Q. That is the fact?

A. Yes, sir.

By Mr. RIDDLE: Do you know whether his boy has it now or not?

A. Don't know whether he holds it now or not.

658 JULY 28TH, 1886.

JOHN T. GELTMACHER recalled by counsel for defendants in cross-bill of Rice:

By the MASTER: On further considering the pleadings in this cause and the questions asked by counsel for the Third National bank, the master is somewhat in doubt as to whether the questions, or some of them, which upon objection he ruled as incompetent, may not be, for some purposes at least, competent and material, and because of such doubt has decided to permit, within reasonable limits, the range of inquiry suggested in said questions, lest the ruling of them out might be error.

By Mr. RIDDLE: Mr. Geltmacher, Mr. Hooker in his testimony states that he made an agreement with Mr. Foote to engage in the purchase and sale of commodities on the board of trade for account of Foote, the transactions in which were to be settled upon the basis

of differences in the market value of property bought and sold alone, and that in purchasing grain or provision and other commodities for account of Foote through the house of S. G. Hooker & Company there was to be no property delivered nor received on account of Foote, but all of the transactions were to be carried on upon the basis of speculating in differences or gambling in grain.

659 Now, as a broker or employee for Hooker, did you ever make any transactions of that character for account of Ira Foote, under Mr. Hooker's directions?

By Mr. BISBEE: Objected to—first, because it is a leading question, and therefore improper; second, because it calls for a conclusion of the witness, what the nature of the trades was that he made; third, because it does not call for a statement of what kind of trades he did make, or, in other words, the fact of how he made his trades. For the three reasons above stated it is objected to.

Q. You may state what you did and what kind of contracts you made for account of Foote.

By Mr. BISBEE: The last part of the question is objected to, because exactly the same question is put to the witness twice or three times in his direct examination, and has been answered fully by him, and is only added to the question because of the objection interposed by counsel for James H. Rice, complainant in cross-bill.

(Objection overruled as to the last question.)

By Mr. BISBEE: The question does not involve any matter that Mr. Hooker has sworn to.

660 A. As regards the nature of the contracts that I made for Mr. Foote, they were just the same as I made for any other customer. Mr. Foote gave us an order to buy——

By Mr. BISBEE: I move to strike out the answer of the witness as being the same made for any other customer.

A. I can only call to mind one certain trade we made for Foote that S. G. Hooker and Company made, that I can testify to knowingly. Of course, I made a good many trades for Mr. Foote; probably did two-thirds of the trading. We had an order to buy for Foote a certain amount of corn, which we bought for a certain delivery. That corn was delivered and paid for by S. G. Hooker & Company. The corn subsequently was sold out for cash, and as far as the nature of the trades is concerned they were all made subject to those rules. If a purchase was made, the property was to be at some time either delivered or settled in the regular course of business; or, in case it was sold, the property was to be delivered or settled, as the case may be. That is the only lot, as I testified yesterday. His figuring out the exact charges that would be incurred or the expenses that would be incurred in carrying this amount of corn, and his making the reply to me that he did—that is something I never have forgotten, and it is the only trade I can call to mind distinctly. If I looked over the books I could recall others.

661 Q. Were all of the trades made for the account of Foote through the house of S. G. Hooker & Company of that kind?

(Objected to for the reason, first, that it is improper—he stated they were made under the rules of the board of trade; second, because it is leading; third, because it is calling for a conclusion of the witness; fourth, because the same subject-matter was fully gone over with, and the witness has answered before.)

By Mr. RIDDLE: The witness has stated the facts concerning a certain transaction, of the purchase of a lot of corn for Mr. Foote. He stated the facts about it. Now I ask him if the facts concerning all the other trades were the same as they were in regard to this transaction.

By the MASTER: The witness may state, so far as he knows.

By Mr. RIDDLE: I only ask in respect to transactions that the witness made.

A. Yes; they were of the same character.

Q. Did you ever receive any instructions from Mr. Hooker to make contracts of a different character?

(Objected to as leading and as asking for a conclusion, and for the further reason that it is improper, as to what instructions he received from Mr. Hooker.)

A. No, sir.

By Mr. BISBEE: I object to the master's trying to remedy the form of question by suggesting what form should be used.

662 By Mr. JACKSON: How long have you been acquainted with Mr. Hooker?

A. Well, I have been acquainted with Mr. Hooker since 1865, I guess.

Q. Are you acquainted with his reputation in this community for truth and veracity?

A. Well, yes, sir.

Q. State his reputation for truth and veracity.

A. Very bad.

Q. Would you believe him under oath?

A. I would not.

Cross-examination.

By Mr. BISBEE:

Q. Would you believe Mr. Hooker under oath if he was corroborated by several honorable witnesses—truthful, honorable witnesses?

A. I would have to know the witnesses.

By Mr. RIDDLE: I object, because it is not proper cross-examination, and the question as to whether the witness would believe Mr. Hooker or not if he was properly corroborated don't affect the question of Mr. Hooker's veracity at all.

(Objection overruled.)

Q. Would you believe Mr. Hooker under oath if he had testified the same as two truthful, honorable gentlemen?

A. If I knew the men to be truthful and honorable I might, but I would have to know the witnesses.

663 Q. If they were truthful and honorable and testified the same way he did you wouldn't believe Mr. Hooker unless you knew those other men?

(Objected to.)

By the MASTER: He may answer the question.

By Mr. RIDDLE: It is equivalent to asking the witness if he knew Mr. Hooker was telling the truth and would believe it.

By Mr. JACKSON: Objected to on the ground that he has already answered it.

A. I certainly should not unless I knew them to be men——

Q. But assuming, Mr. Geltmacher, that they were truthful, honorable gentlemen, two other witnesses, and in relation to a conversation that took place in which only three gentlemen were present, and the two gentlemen besides Mr. Hooker were truthful, honorable gentlemen, and Mr. Hooker testified precisely the same as the other two, would you believe it or wouldn't you?

By Mr. RIDDLE: That is another way of asking the witness if he would believe the fact sworn to by the other two gentlemen; that is all that question means. He might believe the fact, but not because Mr. Hooker swore to it, but because the other two testified to it.

By the MASTER: Counsel is only ascertaining the posture of the mind of the witness toward the person whose testimony is
664 sought to be impeached by a witness, and this he has a right, I think, to do.

(Counsel for the Third National bank except to the ruling of the master.)

A. If I knew the men to be men of truth and veracity I should not hesitate to believe them.

Q. And you wouldn't hesitate to believe Mr. Hooker if he testified precisely the same as those other men of truth and veracity?

A. If he was testifying in his own interest I certainly should.

Q. You would hesitate against the testimony of the other men who testified the same?

A. I should believe Mr. Hooker if he were corroborated by one, two, or three other parties; if he was testifying in his own interest I should believe him.

Q. Believe it to be true?

A. If he was testifying against somebody else——

Q. What I want to get at is this: If two honorable, truthful gentlemen testified to a conversation in which Mr. Hooker was the third party, and those two gentlemen, together with Mr. Hooker, testified

exactly alike, now, because Mr. Hooker testified to that, would you believe all the three witnesses or wouldn't you?

A. I could only answer that as I answered your first question—that I would have to know the parties.

Q. Before you could answer it at all?

665 A. Before I could believe it.

Q. Assuming the other two were truthful, honorable gentlemen against whom nothing could be said—assuming that, and they testified precisely the same as Mr. Hooker, would you, under those circumstances, believe Mr. Hooker's testimony?

A. Assuming, if you will mention yourself and somebody else——

Q. No; I want an answer to that question.

A. Assuming that they were, of course I couldn't help it.

Q. Couldn't help believing him?

A. Believe him if his interests were——

Q. You are on friendly relations with Mr. Hooker, are you?

A. Well, I don't suppose I am. I haven't spoken to Mr. Hooker for some time. Our relations haven't been very friendly.

Q. How many years since you spoke to him?

A. Since his last misfortune.

Q. How many years in round numbers?

A. Five or six years—six years.

Q. Now, then, when did you go to work for the firm of S. G. Hooker & Company?

A. I think it was in 1874—during 1874 some time.

Q. The book that you now hold is the option book, is it not, kept by S. G. Hooker & Company from July 11th, 1874, to May 29th, 1876?

A. Yes, sir.

Q. That is correct, is it not? Isn't it true that all the

666 trades that were made the initial of the man who made them is put down in the option book in connection with the trade that was made; isn't that trade?

A. Yes, sir.

Q. For instance, where the letter H comes that means the trade was made by Mr. Hooker, doesn't it?

A. Well, unless they had somebody else with the same initial.

Q. Do you know of anybody else that made trades?

A. Don't know whether Mr. Hooker's son was working for them at that time or not.

Q. Was there anybody else making trades with the initial H? Isn't it true that where H occurs in connection with those trades Mr. Hooker made those trades on the board?

A. Well, I disremember whether those were the—I suppose that is it. I have forgotten all about that.

Q. Isn't it true that where N occurs the trades were made by Mr. Norton?

A. I suppose that is so.

Q. Isn't it true where G occurs they were made by yourself?

A. Yes. I forget what our system was.

Q. Is that true? That is the original book. Where you see the

letter G in connection with a trade, was not that trade made by you?

A. Well, the chances are it was. I don't know whether that G signifies that I made the trade or whether I received the order
667 for it and it appeared on my card. I may have given Mr. Norton an order, and he may have executed that order and credited me; but I am under the impression that signifies the party who made the trade.

Q. If Mr. Lincoln and Mr. Norton both swore that where the letter G occurs you made the trade and where the letter N occurs Mr. Norton made the trade and where the letter H occurs Hooker made the trade, would you believe them under oath?

(Objected to.)

—. It would be impossible for a person to keep that record. Many and many a time Mr. Norton was identified in provisions and I was identified in grain, and Mr. Norton might at the minute be in a provision crowd, and Mr. Norton might go and execute an order in grain and come back and say, I bought, or I sold, a certain amount of property or grain to so and so for so and so, and I would put it on my card. Mr. Norton would make the trade and give me the memorandum, and I would do the same thing in provisions. It would be impossible to keep a correct record of that.

Q. Please examine the option book kept by S. G. Hooker & Company, which I now show you, and state what the letter H indicates where it occurs in connection with each trade.

668 A. It might indicate that Mr. Hooker had a card; that his card was turned in. For instance, my card——

Q. Do you know what it does mean?

A. I haven't any doubt but what it indicates that the party that turned in those cards were supposed to have made those trades.

Q. What does the letter N. indicate?

A. Then it would be Mr. Norton.

Q. What does the letter G. indicate?

A. It would be me.

Q. Will you tell me when you went to work for S. G. Hooker & Company?

A. I disremember.

Q. Can you examine that option book in your lap and now before you and state when the first letter G. occurs in that option book, indicating that you made a trade?

A. As far as that G. is concerned, I suppose I didn't look it over thoroughly. I suppose that is February 25th, 1875.

Q. When did you go to work for S. G. Hooker & Company?

A. I can't tell.

Q. Well, about when?

A. I had an idea it was in 1874.

Q. What is your idea now?

A. I was railroading, and came back, and one time I quit. I could tell—I could find out.

Q. Give your best judgment when you went to work for him. Have you any judgment about it?

669 A. I suppose it was, as I said, in the latter part of 1874, but I wouldn't——

Q. What did you go to doing when you first commenced working for the firm?

A. Well, I was on the board most of the time.

Q. You were a member of the board of trade, wasn't you, at that time?

A. Yes, sir; as I said yesterday, I did a little of everything. We were receiving car-lots, and I attended to them, and did a little on the books—assisted Mr. Norton.

Q. When did you quit working for S. G. Hooker & Company?

A. I quit working for him about the time they failed.

Q. In the month of June, 1876, was it?

A. About that time.

Q. You quit work then. How much did they pay you a month?

(Objected to.)

By the MASTER: He may answer the question.

(Exception.)

Q. What was your compensation while you worked for S. G. Hooker & Company?

A. I think it was $100 a month. Seems to be February 20th, 1875.

Q. When you commenced working there, you mean?

A. According to this, of course. I have an account in the other book, but that is an old balance, I suppose.

Q. Now, after having refreshed your memory from the books, when did you commence working for S. G. Hooker & Company?

670 A. Well, according to this, it must have been in 1875, but I was under the impression I was there in 1874.

Q. What time in 1875?

A. This is February 20th.

Q. What was your compensation? Can't you state that after having examined the ledger? Can you answer that question, or can't you?

A. My impression was I was getting $1,200 a year; I haven't figured this out; can't tell.

Q. You can't tell from the books what you were getting?

A. I could if I would go over the whole account.

Q. Did you have any other interest in the firm of S. G. Hooker & Company excepting to receive your salary of $1,200 a year?

A. At that time, no, sir.

Q. Did you at any time?

A. Not with Mr. Hooker and Mr. Lincoln. I was a partner of Mr. Hooker's at one time.

Q. When was that?

A. That was before the fire, and a short time after the fire.

Q. During the time Mr. Hooker was in partnership with Mr. Lincoln you had no interest in the firm excepting your salary, did you?

A. That is all.

Q. And you commenced work there about February 20th, 1875?

A. From these books it appears so; yes, sir.

671 Q. And you quit work there about the time the firm failed, the last of May or first of June, 1876, did you?

A. I think I was there in 1874. I wouldn't say positively; it has been so long. My impression is I was there in the latter part of 1874.

Q. When did you first get acquainted with Ira Foote?

A. About the time of the fire.

Q. What was he doing—what was his business? You mean by the fire in October, 1871?

A. Yes, sir. I don't know what his business was.

Q. Was he not a carpenter and builder?

A. I am under the impression he was; didn't pay very much attention. I met him through Mr. Hooker, in a social way.

Q. At Mr. Hooker's house?

A. Yes, sir.

Q. Was he trading through the house of S. G. Hooker & Company when you went to work for them?

A. When I went to work for them?

Q. Yes.

A. Don't think he was.

Q. Don't think he had commenced? Is that the way you answer?

A. I think he commenced trading shortly after the Adams failure, whenever that was; I disremember when it was.

Q. Were you present at the Tremont house and heard any conversation between Mr. Hooker and Mr. Foote with relation to Mr. Foote's trading through the firm of S. G. Hooker & Company?

672 A. I have been in the Tremont house with Mr. Hook and Mr. Hooker. Mr. Hook had charge of the wine-room, and Mr. Hooker and I, on our way home, quite often would drop in there and see Mr. Hook and Mr. Foote, and I have heard quite a good many conversations between those parties in what is called the wine-room; go in there and *and* get a glass of wine and sit there and talk over the markets and the outlook.

Q. Did you hear any conversations between Mr. Foote and Mr. Hooker in relation to trading before Mr. Foote ever did any trading through S. G. Hooker & Company?

A. No, sir.

Q. You never did?

A. So far as doing any business is concerned, of course Mr. Foote—I have heard him talk over this Adams deal with Mr. Hooker.

Q. What did you ever hear Mr. Foote say about what you call the Adams deal?

A. I can't tell exactly what it was. I know that two or three times when he was around and interviewing Mr. Hooker as a friend

in regard to his position or condition with Adams, which Mr. Foote considered quite serious, and Mr. Hooker was helping him out of it and went to his office with him.

Q. Isn't it a fact that Mr. Foote had bought some oats through Adams, and they had been delivered, and Adams called on Foote for the money to pay for them? Isn't that true?

673 A. I don't know what the nature of the transaction was. I knew Mr. Foote had lost some money, and Mr. Foote considered that Adams had taken advantage of him.

Q. Didn't it grow out of the fact that there was some oats actually delivered to Adams for Foote's account, and that Adams wanted the money of Foote to pay for them? Isn't that the fact?

A. Well, I don't know the exact nature of the transaction.

Q. But don't you remember so much of it?

(Objected to. He has stated twice that he don't know.)

A. I don't know. I wouldn't state whether it was a cash transaction or whether it was in the way of margins or what it was. I know there was some difference, and Mr. Foote came around to see Mr. Hooker about it, and finally Mr. Hooker went to Mr. Adams' office, and Mr. Hooker claimed or said that he had——

Q. You stated in direct examination that the trades you made were all under the rules of the board of trade, did you?

A. Yes, sir.

Q. What were the rules in force at that time in relation to ringing up or cancelling a contract that had been made for a customer? What was the rule in force at that time? For instance, a commission merchant like Hooker & Company had bought some wheat for a customer like Foote—what was the rule in relation to ringing off or cancelling the purchase?

674 A. That trade would be—for instance, we had bought 5,000 bushels of corn for Mr. Foote. That would stand on our books as a purchase for Foote. If another customer gets an order to sell the same option, the same delivery, and the same amount, and we had sold it to another member of the board of trade, and they should ring up it would settle, it would leave our books one customer long against another customer short—that is, there would be——

Q. That was the rule at that time, was it, in 1874, 1875, and 1876?

A. I think by referring to the books you will find——

Q. That is not what I am asking you. I am asking you what the rule was with relation to ringing off a purchase against a sale in force at the time you were working for S. G. Hooker & Company.

A. As between members of the board of trade?

Q. Yes.

By Mr. BISBEE: He says he sold the grain under the rule. I am asking what the rule is or was on the board of trade in relation to ringing off the contracts of purchase against the contracts of sale.

A. What the rule in regard to ringing was, of course I don't know

that. I couldn't state positively, although the chances are it was the same as it is now. As far as the purchase and sale is concerned, if I bought any stuff I expected to take that stuff and pay for it.

675 Q. I am not asking you that; I am asking what the rule was in relation to ringing off, ringing up, the trade.

A. I suppose it was just the same then as it is now. Whenever a commission-house can make a settlement or ring a trade it is his interest to do it, and they invariably do it unless they have some object in view.

Q. What is the rule now in relation to that in force on the Chicago Board of Trade?

A. They ring up all the trades they possibly can.

Q. What is the rule, the printed rule, in relation to that subject-matter in force now?

A. I don't know that I could give it.

Q. Do you know what the rule was in 1874, 1875, and 1876 on that subject on the Chicago Board of Trade?

A. I know what the custom was, and of course a commission-house wouldn't go to work and ring up trades or dispose of trades.

Q. I am asking of you now what the rule was in force on the Chicago Board of Trade at that time. You can say yes or no.

A. I know what they were as far as—that is, practically speaking, I know what they were; don't know that I could give them verbatim.

Q. Give me the substance of the rule in force while you were working for S. G. Hooker & Company in relation to ringing up trades.

A. Don't know there was any rule in the board of trade in regard to it.

676 Q. You only know what the custom was among commission merchants.

A. Yes, sir.

Q. You know the custom was whenever a commission merchant could ring off a trade to do so?

A. Well, no.

Q. Don't know that?

A. No.

Q. What proportion of the trades do they ring up?

A. Whenever it was—great many people, for instance, have August corn bought and August corn sold. They would ring that up because they want cash corn.

Q. I am asking you what it was then.

A. The same thing held good then that would now.

Q. Then you say now that you don't know what the rules were at that time? Then I move to exclude all the testimony of this witness with relation to his filling any contracts for Ira Foote in accordance with the rules of the Chicago Board of Trade.

Q. Will you take the option book kept by S. G. Hooker & Company between July 11th, 1874, and May 29th, 1876, and point out in that option book the 30,000 bushels of corn which you say were delivered?

A. I don't know that I can.

Q. I want you should. You bought 5,000 of that corn on the 10th day of April, did you not, of G. P. Comstock & Company at 78 and ¾ cents a bushel, and you did the buying yourself?

A. Yes, sir.

677 Q. Now, then, didn't you cancel that purchase on the 29th day of the same month that you bought it and before May arrived by offsetting it against a sale known as account number 642?

A. That trade was settled; yes, sir.

Q. That is the fact about it, isn't it? Now, then, the next trade number, 632. You bought that 5,000 of corn of G. P. Comstock & Company, did you, on the 10th of April, 1875, at 78 and ¾ cents a bushel?

A. Yes, sir.

Q. Look at the next one. Did you buy that on the 12th of April, 1875, of Nichols & Helmer at 79 cents?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Did you, on April 3rd, settle off that contract, cancel it against a sale you had known as item 608?

A. According to these books it is.

Q. That is correct. Did you, on the 12th of April, buy 5,000 more of that corn of Cooley, Dwight & Gillette at 78 and ⅝ cents a bushel?

A. Yes, sir.

Q. And did you settle off that purchase on the 20th of April, the same month, and before May arrived by offsetting it against account 551?

A. According to the books, yes, sir. It was rung up in that way.

Q. Now, Mr. Geltmacher, did you ever make any trade for

678 Mr. Foote unless directed by Mr. Hooker or approved by Mr. Hooker?

A. I had to receive his sanction before I executed an order.

Q. You didn't execute an order for Mr. Foote without its first going to Mr. Hooker for approval, did you?

A. Any new trades. If Mr. Foote had any orders—if he had a lot of anything that there was a profit on or he had anything bought for new trades, I was allowed to make for him no new trades.

Q. Without Mr. Hooker's sanction?

A. Without Mr. Hooker's sanction.

Q. Hence, if an original order had been given you by Mr. Foote to buy any article, you would not have filled that without reporting it to Mr. Hooker?

A. No; not a new trade.

Q. I said original order. That covers it, don't it?

A. Yes, sir.

Q. And you would take that order to Mr. Hooker, and he would sanction it before you could file it?

A. That was my instruction from him.

Q. From whom?
A. Mr. Hooker.
Q. And you did that as a matter of fact for almost every transaction?
A. Any trades that I made—any new trades.
679 Q. In what business was Mr. Foote engaged during this period of time when you worked for S. G. Hooker & Company?
A. I think he was in the glass business.
Q. Was he not in the grain business?
A. No; he was not identified, only as a speculator.
Q. You think he was in the glass business?
A. With Mr. Rice.
Q. And that is the only business he had at that time, that you know of, excepting speculating?
A. All I know of.
Q. That is all you know of?
A. All I know of.
Q. Please open the option book of S. G. Hooker & Company, which you hold in your lap, and turn to the first transaction that appears on said option book, which is trade number 218. Did the firm of S. G. Hooker & Company, through Mr. Norton, on the 25th day of March, 1875, buy 250 tierces of lard for the June option at $14.25 a hundred pounds?
A. Yes, sir.
Q. That lard would not be deliverable, under any circumstances, until the month of June, would it?
A. Well, yes, it might.
Q. Under what circumstances, if it was June lard, would it be deliverable before June?
A. Such instances as that I have taken part cash property 20 days before the maturity of the contract.
Q. Then you made a new contract, didn't you?
A. I took the property and cancelled the old contract 20 days, and some 30 days, previous to the maturity.
680 Q. Isn't it true that transactions like that I have called your attention to, the seller of that lard had all the month of June to deliver that lard in?
A. I suppose that was the —. The party that bought, I suppose he would not have to pay for that lard before the first of June.
Q. Isn't it true that the seller of that lard could deliver that, under the rules of the board of trade, any day he chose during the month of June?
A. Yes, sir.
Q. Isn't that exactly what it meant?
A. Of course; when the trade was made he had the option to deliver any time during the month of June.
Q. The purchaser of that lard couldn't demand it until June, could he, till the last day of June?
A. Of course, he might demand it; he wouldn't get it.
Q. Could you under the rules of the board of trade?

A. Under that contract he could not; he might demand it, of course.

Q. When did Mr. Foote sell that identical lard?

A. According to this, sold 5 days after he bought it.

Q. What day?

A. On the 29th of March.

Q. Five days afterward?

A. Yes, sir.

681 Q. Now, then, all that Mr. Foote would have in that transaction would be to take the credit for the difference between what he agreed to pay, $14.25, and what he sold it for, $14.55, a hundred pounds?

A. Yes, sir.

Q. That is all there was of it, so far as he is concerned, wasn't it?

A. Yes, sir.

Q. And he paid commissions besides, didn't he?

A. Well, I suppose so; don't know whether we settled this up or not.

Q. No; the commission to the firm. That is, Hooker & Company charged him commission for doing that business; that is correct, isn't it?

A. Yes, sir.

Q. He bought it on the 25th of March and sold it on the 29th of March, and it was not deliverable till June; that is the fact, isn't it?

A. That is it; yes, sir.

Q. That is the fact?

A Yes, sir.

Q. And, after it was sold on March 29th, Mr. Foote had no interest in it, had he?

A. I don't know what arrangements Mr. Lincoln and Mr. Hooker had with Mr. Foote. Some of the customers—it depended altogether what commissions we charged—very light commission they would have to stand behind the trades——

Q. How much commission did Mr. Foote pay for doing this business? How much on lard?

A. Couldn't tell unless I referred to the account of sales.

682 Q. Don't know? How much commission did he pay for wheat?

A. I suppose 12.50 per cent.

Q. Didn't he pay half a cent a bushel?

A. I don't know.

Q. Do you know whether he did or not?

A. I couldn't say.

Q. Did he pay half a cent a bushel for corn?

A. I didn't make out the account.

Q. Do you know, as a matter of fact, whether he paid half a cent a bushel commission for corn transactions or not?

A. I don't know.

Q. Do you know what commissions he paid for lard?

A. No, I don't know.

Q. Do you know what he paid for pork?

A. No, I don't know.

Q. Do you know what the arrangement was between S. G. Hooker & Company and Mr. Foote, as to commissions on any item?

A. No, sir; I do not. I might say I knew at the time, but I disremember now what they were.

Q. Referring again to this transaction, didn't S. G. Hooker & Company cancel this purchase of 250 tierces of lard on April 15th, 1875—didn't they wipe it out by ringing it up with 210?

A. April 25th, settled with 210, and that was a sale to J. K. Fisher. Yes, sir.

Q. Now, then, didn't they also cancel the sale of that lard on April 10th, 1875, by ringing it up with 226?

A. That was settled against a purchase made; Manon.

Q. On that day, wasn't it?

683 A. Yes, sir.

Q. Look at 512.

A. Bought of Spruance, Preston & Company 5,000 wheat, December 17th, at 88 and $\frac{7}{8}$ cents.

Q. That is what was done?

A. Yes, sir.

Q. That was done on December 17th, was it?

A. Yes, sir.

Q. When did Foote sell that wheat, December 28th?

A. Yes, sir.

Q. That was February wheat, was it not?

A. Yes, sir.

Q. After Mr. Foote had sold that wheat December 28th—February wheat—he had no interest in it, did he, to your knowledge?

A. No, sir.

Q. Is it true that on January 30th S. G. Hooker & Company rung up that purchase and cancelled it against a sale made, number 543?

A. According to the books—yes, sir.

Q. Well, is it true or isn't it?

A. Yes, sir.

Q. Isn't it true that S. G. Hooker & Company cancelled that sale made to Nichols & Helmer on the 28th of December, the very same day they sold it?

A. Yes, sir.

Q. That is true, isn't it? They rung it up with 508, didn't they?

A. Yes, sir.

Q. And Foote was credited in his ledger account the difference, wasn't he, between 88 and $\frac{7}{8}$ and 91 and $\frac{3}{4}$ cents?

A. He should have been. I suppose he was.

684 Q. That is what he should have been, isn't it, and that is all there was for Foote in that transaction?

A. That is all.

Q. Isn't it equally true that whenever Mr. Foote bought an article before the month came around that he simply was charged with the

loss, if there was any, and credited with the profit, if there was any? Isn't that true?

A. Yes, sir.

Q. And that is just exactly the way the business was done with him under those circumstances?

A. Yes, sir. So far as my knowledge is concerned, it is.

Q. That is correct, isn't it?

A. Yes, sir.

Q. And the trades were rung up by S. G. Hooker & Company—both purchase and sale—as rapidly as they could ring them in the course of their business. That is true, isn't it?

A. Yes, sir.

Q. It is true, isn't it, that in this option book the red-ink part in the margin here shows whether the trade was settled—the nature of the settlement of each purchase made—don't it, on the left-hand side of the option book?

A. Date of the settlement and number of the sale it was settled with.

Q. And on the right-hand side of the option book the red ink indicates how the sales were settled off, don't they?

A. Yes, sir.

685 Q. And so far as you know, those entries are correct in that book?

A. Yes, sir.

Q. Turn to 619. That is this, is it not, that on April 7th you bought for Foote of Lyon, Lester & Company 5,000 bushels of May wheat at $1.03 and ⅛ cents a bushel?

A. Yes, sir.

Q. It is true, isn't it, that on April 7th, before May arrived, you settled off and cancelled that contract of purchase with account number 577?

A. Yes, sir.

Q. And it is true, isn't it, that you sold that wheat for Foote on the 13th of April — Henry Town at $1.03 and ⅜ cents?

A. Yes, sir.

Q. And you cancelled that sale on April 20th by offsetting it against 576; that is true, isn't it?

A. Yes, sir.

Q. Who did you credit that profit to?

A. Well, it says here, Ira Foote account H.

Q. Who got the profit?

A. Well, I couldn't tell unless I referred to the ledger.

Q. Refer to the ledger, it is right here, and tell me who got the profit in that transaction.

A. I think I can recollect that. Mr. Foote was going to make Mrs. Hooker a present of a chair, I think, and he told Hooker to take a deal for him. I am satisfied Hooker got the profit.

Q. And that Foote didn't get it? Turn to account number 672, and state first what it was.

686 A. Bought 5,000 June wheat at $1.06; sold at $1.09.

Q. When did you buy it?

A. 28th of April; sold the 30th.
Q. Who did you buy it of?
A. Bought of Henry Town.
Q. Who did you sell it to?
A. To Pearson.
Q. What month was the option?
A. It was June.
Q. June option, was it?
A. Yes, sir.
Q. You bought it, you say, on April 28th, and settled that contract of purchase on the 18th of May—wiped it out?
A. Purchase settled on the 18th.
Q. When was the sale settled?
A. May first, I guess.
Q. Of the same year?
A. Yes, sir.
Q. And both purchase and sale were settled off before June arrived, were they not?
A. Yes, sir.
Q. What did you do with the profit there of 3 cents a bushel? What did you do with it?
A. According to this, it says it went to Mrs. H. Another says here, Nellie.
Q. Who was Nellie?
A. Mr. Hooker's daughter.
Q. It reads this way: Ira Foote, account H., account Nellie. Who got the money?
A. I can tell you who didn't get it.
Q. Who didn't?
A. Mr. Foote.
687 Q. Who did get it?
A. The chances are, Hooker got it.
Q. What do you remember about it?
A. I know that Hooker used to get Foote to make trades for him for his wife and for his daughter.
Q. You know that Hooker used to get Foote to make trades for his (Hooker's) wife and daughter?
A. I knew trades were made. This is the one I had in my mind when I spoke.
Q. And not the other one?
A. Well, I knew there was something of that kind. I can't tell who got the money; the chances are that Hooker got the money. Whether his wife or daughter got it, I don't know.
Q. You don't know about that. You know Foote didn't get it?
A. I know Foote didn't get it.
Q. Wouldn't it indicate that Nellie Hooker got that money?
A. This is Mr. Norton's writing; the chances are Nellie got the money.
Q. You made that trade, didn't you?
A. Yes, I made the purchase.

Q. Now, what kind of a fellow was Foote; was he a man of good, clear, business habits?

A. Well, I would call him——

(Objected to because it is calling for an opinion.)

Q. Tell what kind of a man he was about the office; how he stood and what he did.

A. It depended altogether upon circumstances. If markets were going his way he was a nice, pleasant gentleman; if they were
688 going the other way, he was just as a good many other people are—he would vent his feeling in a great many disagreeable ways.

Q. Turn to account 706.

A. Hooker paid that.

Q. He paid it—you are sure? Who paid that loss? That was this, wasn't it, that on the third of May you bought for Foote, of Norton, Son & Company, 5,000 wheat, seller June, and on the 29th of May, before June arrived, you sold that wheat to R. I. Murphy & Company?

A. Yes, sir.

Q. And cancelled off the purchase on the 22nd of May, and cancelled off the sale on the 31st of May, didn't you?

A. Yes, sir; account rendered May 31st.

Q. You charged Mr. Foote up the difference, didn't you?

A. Well, I can't say that.

Q. You don't know, do you?

A. I will have to refer to the ledger.

Q. You say you don't know?

A. I would have to refer to the ledger.

Q. Turn to account number 986. What is that? Give the date.

A. Bought of Comstock & Company 5,000 number 2 corn, seller December, at 47 and ⅜ cents, for account of Foote.

Q. You settled that on December 29th, didn't you, by cancelling contract and purchase?

A. Yes, sir.

Q. Now, then, your books show you sold that to J. C. Myers & Company at 49 cents?

689 A. Yes, sir.

Q. On December 30th?

A. Yes, sir.

Q. Who is J. C. Myers & Company?

A. A firm that have gone out of existence now. They were a commission house here.

Q. That was a commission house?

A. Yes, sir.

Q. You are sure of that?

A. J. C. Myers & Company was a well-known commission house at that time.

Q. Isn't it true that in most instances where Mr. Foote bought any article through S. G. Hooker & Company he sold it out before the delivery month arrived?

A. Well, that depended on the distance of the option traded in from the time the trade was made.

Q. No; but I am asking you as a matter of fact. Isn't it true that, as a rule, when Mr. Foote bought anything it was sold out before the delivery month arrived?

A. Before the maturity of the contract?

Q. Yes.

A. I wouldn't want to answer that question unless I looked over his trades and found out.

Q. I am asking for your recollection. You said you didn't recollect only one delivery of 30,000 bushels of corn. I am asking if it is not true that, as a rule, the article was sold out before the delivery month arrived?

A. I don't remember. I couldn't say.

Q. That is all the answer you want to give to that question, is it?

A. Mr. Foote was—we looked upon him as——

690 Q. I am not asking that. I want an answer to my question.

A. He was looked upon as a speculator, not as a scalper.

By Mr. RIDDLE: You never scalped the market for Foote?

A. No; not as a rule.

By Mr. BISBEE: He was looked upon as a speculator?

A. Yes, sir.

Q. Isn't it true that, as a rule, whatever he bought was sold out before the delivery month arrived, and he either took his profit or was charged his loss?

(Objected to on the ground that the books show what was done with all property bought and sold. The recollection of the witness had been stated several times that he don't know; don't recollect.)

Q. You have no further answer to make, then, to that question?

A. I can't say yes or no; can give you what my impression is; wouldn't say positively. My impressions are that Mr. Foote was considered one of these long-winded speculators and who had a deal and change- it off from month to month. His deals have been changed from month to month.

Q. Have you been on the board of trade ever since you were in the employ of S. G. Hooker & Company?

A. Yes, sir; most of the time since.

Q. You are still on the board of trade?

A. Yes, sir.

Q. You are still a member of the board of trade?

691 A. Yes, sir.

By Mr. RIDDLE: You didn't keep the books of S. G. Hooker & Company?

A. No, sir; excepting to assist Mr. Norton in one way and another. I was not book-keeper.

Q. You had nothing to do with the disposition of contracts after they were made except as you received orders?

A. That is all.

692 JULY 27TH, 1886.

J. IRVING PEARCE recalled by Mr. JACKSON:

Q. How long have you known Mr. Hooker?
A. Twenty years, I think.
Q. Do you know what his reputation is in this community for truth and veracity?
A. Yes, I know it.
Q. What is his reputation for truth and veracity in the neighborhood where he resides?
A. His reputation is bad.
Q. From that reputation, would you believe him under oath in a matter where he was interested?
A. I would not.

Cross-examination.

By Mr. BISBEE:

Q. You have been having a good deal of litigation, hav-n't you, Mr. Pearce, growing out of this matter?
A. With Mr. Hooker?
Q. Yes, in connection with this matter.
A. Yes, sir.
Q. I believe you stated yesterday that you were sued in trover for one of these identical notes?
A. Yes, sir.
Q. Because it had its foundation in gambling?
A. Yes, sir.
Q. And judgment was recovered against you for the value of it?
A. Yes, sir.
Q. And Mr. Hooker was a witness against you, wasn't he?
A. Yes, sir.
693 Q. And there has been a good deal of feeling between you and Mr. Hooker, hasn't there?
A. Not very much.
Q. Quite a good deal, Mr. Pearce, hasn't there?
A. I must say I am not in love with the man.
Q. You don't really love him?
A. No; but I wouldn't want to, for the sake of injuring him——
Q. You don't carry malice in your heart?
A. No, no malice.
Q. Would you believe him under oath if two honorable men were to testify the same thing about a conversation had when nobody else was present?
A. I would believe the two men, take their testimony for it, but I wouldn't believe it because he testified to it.
Q. But if two gentlemen, good men, testified to a conversation when no one was present but these two and Mr. Hooker, you wouldn't disbelieve it simply because Mr. Hooker testified to it?
A. I wouldn't disbelieve them, no; but I wouldn't believe it because he testified to it.

Q. But you would believe it if the other two men testified to it?
A. I would believe them.

Taking of further testimony adjourned to Friday, July 30, 1886, at 2 o'clock p. m.

694 AUGUST 2ND, 1886.

DANIEL K. TENNEY, being first duly sworn, testified on behalf of Third National bank as follows:

By Col. JACKSON: Please state your name.
A. Daniel K. Tenney.
Q. Your residence and business?
A. Chicago; business, lawyer.
Q. How long have you been a lawyer?
A. Thirty-one years.
Q. Where have you practiced during that period?
A. Madison, Wisconsin, and Chicago, Illinois.
Q. You are practicing now in Chicago?
A. I am.
Q. What is the name of your firm?
A. Tenney, Bashford & Tenney.
Q. Are you acquainted with S. G. Hooker, of the firm of S. G. Hooker & Company?
A. I am.
Q. How long have you been acquainted with Mr. Hooker?
A. I should think about 10 or 12 years.
Q. Mr. Tenney, Mr. Hooker, in his testimony, on page 59, says as follows in reply to *in* interrogatory:

"Q. Can you explain how it was that this account (referring to the account of Ira Foote with S. G. Hooker & Company) was swollen from $12,000 to $22,000, and during such swelling process no trading was done whatever by Mr. Foote?" To which question he makes the following answer:

695 "The only explanation I will make, if the master will give me the privilege, is that about this same date Dan. Tenney was called in and we owed $9,000 on 'change. We had stopped and our transactions on 'change had been sold out for whom they concerned, and we owed about $9,000. Tenney came in there one day, Saturday, that same week. He said, Mr. Hooker, we are going to make a statement. He said, Mr. Fowler, Mr. Pope, and certain other members of the board gave notice that they would not settle with us under our offer of 33% without a statement from our books or an exhibit from our books. Now, he said, Mr. Hooker, we don't want you; you talk too much, and he said Jim, meaning my brother-in-law, and your partner, Mr. Lincoln, are going to stay here *and* Sunday and see if we can fix your books in some shape so that we can make a showing to the board of trade and get a settlement of 33 cents on the dollar. I did so; was not there Saturday or Sunday. The following Monday, said I, Jim, what success did you have with our books? He said, Mr. Tenney says you have too much assets, and you must make certain charges and certain

changes and make the best settlement you can with your books if they force you to show them. That is why I have always been satisfied that Mr. Lincoln and Mr. Norton garbled these accounts, after my knowledge of what the Foote account was." Please state whether you made any such statements or had any conversation of the character referred to by Mr. Hooker.

A. The entire statement is totally false in detail and in whole.

Q. Please state if at any time you had the books of S. G. Hooker & Company in your possession.

696 A. I never saw the books of S. G. Hooker & Company or had anything to do with them in any shape whatsoever.

By the WITNESS: I desire to make an explanation in regard to that matter, inasmuch as the testimony read involves my reputation as a lawyer.

The transaction concerning the indebtedness of Mr. Foote, as far as I know anything about it, was about as follows: I was in Madison, Wisconsin, either on business or on a vacation, I now have forgotten which, when I received a telegram from S. G. Hooper & Company to come to Chicago on important business. I came here. Mr. Hooker turned over to me a note against Mr. Foote amounting, I should say, to either $10,000 or $12,000, and an open account amounting to about the same, the total being, I think, $22,000 and some odd dollars, and desired me to collect or secure it. Mr. Foote was not in the city. His attorney-in-fact, James H. Rice, claimed to have authority from him to act in the matter, and with him I made a settlement of the account and the old note, taking in payment 4 notes of the Couch estate, $5,000 each, as I remember them, guaranteed by Mr. Foote by Rice, attorney-in-fact, and the difference in cash. This transaction had nothing whatsoever to do with any failure of S. G. Hooker & Company. I do not remember whether they had failed at that time or whether it was a year before or a year afterward that they failed. The failure spoken of in the interrogatory to which my attention has been called, or the answer to it, was about this way: I was in Madison again at that time, and was telegraphed for by the firm of S. G. Hooker & Company to come to Chicago. I had observed by the newspapers that they had failed on

697 'change. I met them at their office on Sunday by appointment. Mr. Hooker was present and was the chief spokesman. He told me they had failed and they wanted to make a settlement with their creditors. I asked him if he had his balance-sheet prepared to show how he stood. He said they had. It was produced. It showed them to have net assets of something like $90,000, according to my recollection. My impression is they were owing on 'change a very large amount; can't state the amount now; should say perhaps $75,000 or $100,000. They wanted me to indicate to them how they could make a settlement. I told them I didn't see how it could possibly have been done on such a showing. Instead of being broken they were rich; asked them how they expected to do it. Hooker said that was what they sent for me for—to tell them how to do it. I said, The only way I can see for you to

— so, since everybody knows you have failed, is to offer your creditors 33 and ⅓ cents on the dollar, that being the amount you want to pay them, and tell them you are ashamed to make a statement. You are spread out; your affairs are scattered around through the West, various places, and they all know you have failed, and if they want to settle with you for 33 and ⅓ cents on the dollar — will try and raise that for them in 30 days. Perhaps you will be able to settle with them on that basis. Mr. Hooker subsequently told me that within 24 hours after the time I gave him that advice he settled with every one of his creditors at that figure—on that basis. That is all I ever knew or heard about it; never advised the firm of S. G. Hooker & Company nor any member of it or any other concern in my life to falsify their books in the slightest particular, nor
698 was the subject of doing so ever discussed.

Q. On page 105 of Mr. Hooker's testimony he was asked: "Did Mr. Tenney ever say to you that your brother-in-law and Mr. Lincoln were going to stay in Chicago, and that he and Mr. Lincoln were going to fix up the books in some shape so that they could make a showing to the board of trade and get a settlement of 33 cents on the dollar?

A. Mr. Lincoln and Mr. Norton told me.

Q. Did Mr. Tenney ever state that to you?

A. He said they were going to fix up the books.

Q. Where did Mr. Tenney ever say they were going to fix the books?

A. In our office.

Q. Who was going to fix the books?

A. He and Mr. Lincoln and Mr. Norton."

Please state whether you ever told Mr. Hooker that you and Mr. Lincoln and Mr. Norton were going to fix up the books.

A. Never told him anything of the sort; never had any conversation with him of any such purport.

Q. You say you never saw the books of the firm?

A. Never saw the books in my life.

Q. On page 107 of Mr. Hooker's testimony he was asked: "Did Mrs. Hooker ever see the books of your firm?" and he answered, "Yes; she saw charges made by Mr. Lincoln or Jim; money charged to her when she and I were away at the seashore; day and date. I presume it went where the same money that we paid Dan. Tenney, $1,000, and Tenney paid him back $500 of that. I had the whole thing to pay. It was the most corrupt charge that was ever made by man." Please state whether you ever paid Mr. Lincoln $500 of any sum that you received from S. G. Hooker & Company or from S. G. Hooker.

A. Never paid him a cent on any such account.

699 Q. Have you ever paid him any money at all?

A. Never on any account of fees in my life. Have received several fees from him; from the firm of S. G. Hooker & Company $1,000, I think, 3 times, three fees of that size; never paid back any of them; was never asked to, and nobody ever dreamed that I was going to.

Q. Are you acquainted with the general reputation in this community and neighborhood of S. G. Hooker for truth and veracity?

A. I am.

Q. What is his general reputation in this neighborhood for truth and veracity?

A. It is very bad.

Q. From your knowledge of his reputation for truth and veracity would you believe him under oath?

A. I would not.

By Col. JACKSON: I now offer in evidence a declaration filed on the 26th day of April, 1878, in a cause entitled Third National Bank of Chicago *v.* Ira Foote, the cause of action in said declaration named being two notes upon which judgment was recovered by the plaintiff therein against Ira Foote and which judgment so recovered is the identical judgment which James H. Rice in his cross-bill filed herein seeks to have declared void, and which declaration is in words and figures as follows, to wit:

700 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States, in May Term, A. D. 1878.

Huntington W. Jackson, who sues as receiver of the Third National Bank of Chicago, a corporation organized under and formerly doing business at the city of Chicago, State of Illinois, by virtue of the laws of the United States, plaintiff in this suit, by Lyman & Jackson, his attorneys, complains of Ira Foote, a citizen and resident of the city of Chicago, State of Illinois, in the district aforesaid, defendant in this suit, summoned, &c., of a plea of trespass on the case on promises:

For that whereas the estate of Ira Couch, deceased, by W. H. Wood, Caroline E. Couch, and James Couch, trustees of the estate of Ira Couch, &c., heretofore, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and seventy-six, at Chicago, to wit, at the district aforesaid, made its two certain notes in writing, commonly called a promissory note, and bearing date the day and year last aforesaid, and thereby then and there promised to pay by one of said notes, on the first day of July, A. D. 1877, after the date thereof, to the order of Ira Foote, at their office, in Chicago, Illinois, the sum of five thousand ($5,000) dollars, with interest at eight per centum per annum, and by another of said notes said estate promised to pay, on the first day of October, A. D. 1877, to the order of said Ira Foote, the sum of five thousand ($5,000) dollars, at their office, in Chicago, Illinois, with interest at
701 eight per cent per annum, for value received; and the said Ira Foote, by J. H. Rice, attorney-in-fact, to whom or whose order the payment of the said sums of money in the said notes specified was to be made as aforesaid, afterwards and before the payment of the said sums of money mentioned in

the said notes, or any part thereof, and also before the time limited and appointed by the said notes for the payment thereof, to wit, on the same day and year and at the place aforesaid, endorsed the said notes in writing, and by that endorsement ordered and appointed the said sums of money in the said notes specified to be paid to the Third National Bank of Chicago or order, and then and there delivered the said notes so endorsed to the said Third National Bank of Chicago; and thereupon, on the day first aforesaid and at the place aforesaid and before the delivery of said notes to the said bank, in consideration that the said bank would accept and receive the said notes of the said estate of Ira Couch, deceased, and for a valuable consideration to him in hand paid by the said bank, he, the said defendant, by his endorsement in writing thereon, by J. H. Rice, his attorney-in-fact, then and there guaranteed the payment of the said sums of money in the said notes specified, and promised the said bank to pay the same, according to the tenor and effect of the said notes, if the said estate of Ira Couch, deceased, should not so pay the same. And the plaintiff, as receiver aforesaid, avers that thereupon the said bank, relying upon the undertaking of the said defendant, then and there received and accepted the said notes, and that, although the day of payment in said notes specified has long since elapsed, the said estate of Ira Couch, deceased, did not nor would, on that day or at any other time, pay to said bank or to
702 the plaintiff, as receiver aforesaid, the amount of said notes or any part thereof, but refused so to do, of all of which the defendant, on the — last aforesaid, had notice; by means whereof the defendant became liable to pay to said bank and to the plaintiff, as receiver aforesaid, the said sums of money in said notes specified, and, being so liable, in consideration thereof then and there undertook and faithfully promised the said bank and the plaintiff, as receiver aforesaid, to pay the said sums of money in the said promissory notes specified, according to the tenor and effect thereof. And the plaintiff further avers that on the twenty-fourth day of November, A. D. 1877, the said Third National Bank of Chicago was put into liquidation and the plaintiff duly appointed receiver thereof by the Comptroller of the Currency of the United States, under and in pursuance of the laws of the United States.

And whereas also the said defendant afterwards, to wit, on the twentieth day of April, in the year of our Lord one thousand eight hundred and seventy-eight, in said district became and still is indebted to the said plaintiff, as such receiver, in the further sum of fifteen thousand dollars of lawful money of the United States of America for money before that time lent and advanced by the said plaintiff, as such receiver, to the said defendant, and at the special instance and request of the said defendant; and in like sum for other money by the said plaintiff, as such receiver, before that time paid, laid out, and expended for the said defendant, and at the like special instance and request of the said defendant; and in the like sum for other money by the said defendant before that time had and received to and for the use of the said plaintiff, as such
703 receiver; and in the like sum for other money before that time

and then due and owing from said defendant to said plaintiff, as such receiver, for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said defendant to said plaintiff, as such receiver; and in the like sum for goods, wares, and merchandise before that time sold and delivered by the said plaintiff, as such receiver, to the said defendant at the like special instance and request of the said defendant; and in the like sum for the price and value of work then done and material for the same provided by the said plaintiff, as such receiver, for the said defendant, and at the like special request of the said defendant; and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on day and year aforesaid and at the place last aforesaid, undertook and then and there faithfully promised the said plaintiff, as such receiver, well and truly to pay unto the said plaintiff, as such receiver, the several sums of money in this count mentioned when the said defendant should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the day and year last aforesaid and at the place last aforesaid, accounted, together with the said plaintiff, as such receiver, of and concerning divers others sums of money before that time due and owing from the said defendant to the said plaintiff, as such receiver, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiff, as such receiver, in the further sum of fifteen thousand dollars of like lawful money as aforesaid; and, being so found in arrear and indebted to the said plaintiff, as
704 such receiver, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid and at the place last aforesaid, undertook and then and there faithfully promised the said plaintiff, as such receiver, well and truly to pay unto the said plaintiff, as such receiver, the sum of money last mentioned when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, &c., to wit, on the day when the said note became due and payable according to the tenor and effect thereof and oftentimes since, to wit, at the place last aforesaid) has not yet paid the said several sums of money above mentioned or any or either of them or any part thereof, either to said bank or to the said plaintiff, as receiver aforesaid, but to pay the same or any part thereof, either to said bank or to the said plaintiff, as receiver aforesaid, the said defendant has hitherto wholly neglected and refused and still does neglect and refuse, to the damage of the said plantiff, as such receiver, of fifteen thousand dollars, and therefore the said plaintiff, as such receiver, brings suit, &c.; and the plaintiff shows to the court now here the order putting said bank into liquidation and appointing the plaintiff receiver thereof.

LYMAN & JACKSON,
Plaintiff's Attorneys.

705 *Copy of Notes Sued upon.*

$5,000. On the first day of July, A. D. 1877, the estate of Ira Couch, deceased, promise to pay to the order of Ira Foote, at their office, in Chicago, Illinois, five thousand dollars, with interest at eight per cent. per annum, for value received.

Dated Chicago, July 1st, 1876.

WM. H. WOOD,
CAROLINE E. COUCH,
JAMES COUCH,
Trustees of Estate of Ira Couch, &c.

I hereby guarantee the payment of the within note for value received at maturity.

IRA FOOTE,
By J. H. RICE,
Attorney-in-Fact.

$5,000. On the first day of October, A. D. 1877, the estate of Ira Couch, deceased, promise to pay to the order of Ira Foote five thousand dollars, with interest at the rate of eight per cent per annum, for value received.

Dated Chicago, July 1, 1876.

WM. H. WOOD,
CAROLINE E. COUCH,
JAMES COUCH,
Trustees of Estate of Ira Couch, &c.

I hereby guarantee the payment of the within note for value received at maturity.

IRA FOOTE,
By J. H. RICE,
Attorney-in-Fact.

706 Ira Foote to H. W. Jackson, rec'r, &c., Dr.

To goods, wares, and merchandise sold and delivered	$15,000
To money lent and advanced	15,000
To money paid, laid out, and expended	15,000
To money had and received to and for the use of said plaintiff	15,000
To money due for interest and forbearance	15,000
To labor, services, and material	15,000
To balance due on account stated	15,000

Plaintiff's Affidavit of Amount Due.

STATE OF ILLINOIS, } ss:
County of Cook, }

Circuit Court of the United States, Northern District of Illinois, Mar Term, A. D. 1878.

HUNTINGTON W. JACKSON, Receiver Third National Bank of Chicago,
vs.
IRA FOOTE.

Huntington W. Jackson, rec'r, &c., plaintiff, being duly sworn, says that the demand of the plaintiff, as receiver aforesaid in the above-entitled cause, is for money due upon two certain promissory notes, a true copy of which is attached to the declaration filed in above-entitled cause, and that there is due to the plaintiff, as such receiver, from the defendant, after allowing to him all just credits, deductions, and set-offs, the sum of eleven thousand and four hundred and sixty-four and $\frac{46}{100}$ dollars.

HUNTINGTON W. JACKSON,
Receiver, &c.

Subscribed and sworn to before me this 26 day of April, 1878.
NEWTON C. WHEELER,
Notary Public.

707 By Col. JACKSON: Originally the case was brought in the name of H. W. Jackson, as receiver of the Third National Bank of Chicago, and then, afterwards, by leave of court, it was amended so that the Third National Bank of Chicago was substituted as plaintiff instead of the said Jackson.

I also introduce the following pleas in said cause, filed by said Foote May 8th, 1878, which plea is as follows:

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the Circuit Court of the United States, May Term, A. D., 1878.

G. N., 15570.
T. " 1409.

HUNTINGTON W. JACKSON, Receiver,
vs.
IRA FOOTE. } Assumpsit.

And defendant, by Chas. H. Reed and Caruthers and Pearce, his attorneys, comes and defends the wrong and injury when, &c., and says that he did not promise in the manner and form as the plaintiff has above thereof complained against him; and of this he puts himself upon the country.

And for a further plea in this behalf the defendant says that the plaintiff ought not to have his aforesaid action against him, the defendant, because he says that the said several supposed promises in the said declaration mentioned were and each of them was upon the consideration of money won by Stephen G. Hooker and George D. Lincoln, under the firm name of S. G. Hooker & Co., from the defendant by gaming, to wit, by buying and selling for de-
708 fendant on the board of trade deals and options in grain, wheat, lard, and pork, which options and deals were to be settled upon differences alone; wherefore, by force of the statute, the said supposed promises were and are wholly void, and this defendant is ready to verify; therefore he prays judgment if the plaintiff ought to have his aforesaid action against him, &c.

And for a further plea in this behalf the defendant says that the plaintiff ought not to have his aforesaid action against him, the defendant, because he says that the several supposed promises in the said declaration mentioned were and each of them was made upon consideration of money won by Stephen G. Hooker and George D. Lincoln from the defendant by gaming, to wit, dealing in options for grain and other commodities on the board of trade upon differences alone, wherein neither party had or was to deliver or receive any such articles bought or sold; all of which the said plaintiff had notice; wherefore, by force of the statute, &c., the said supposed promises were and are wholly void, and this the defendant is ready to verify; wherefore he prays judgment if the plaintiff ought to have his aforesaid action against him.

CHAS. H. REED AND
CARUTHERS & PEARCE,
Def'd't's Att'ys.

709 NORTHERN DISTRICT OF ILLINOIS:

Circuit Court of United States, May Term, A. D. 1878.

HUNTINGTON W. JACKSON, Receiver,
vs.
IRA FOOTE. } Assumpsit.

The said Ira Foote makes oath and says that he verily believes he has a good defence to this suit upon the merits as to the whole of plaintiff's demands.

IRA FOOTE.

Subscribed and sworn to before me 8th May, A. D. 1878.
E. A. DRUMMOND,
U. S. Clerk.

By Col. JACKSON: I also introduce another plea filed by said Foote in said cause, which is as follows:

United States Circuit Court, Northern District of Illinois.

IRA FOOTE
ats.
HUNTINGTON W. JACKSON, Receiver, &c. } Assumpsit. 176.

And for a further plea in this behalf the defendant says that the plaintiff, as such receiver, ought not to have his aforesaid action against him, because he says that the plaintiff was before and at the time of the commencement of this suit and still is indebted to the said defendant in the sum of twenty thousand dollars, of lawful money of the United States of America, for money before that time lent
710 and advanced before that time by the said defendant to the said plaintiff and at the special instance and request of the said plaintiff; and in the like sum for other money by the said defendant before that time paid, laid out, and expended for the said plaintiff and at the like special instance and request of the said plaintiff; and in the like sum for other money by the said plaintiff before that time had and received to and for the use of the said defendant; and in the like sum for other money before that time and then due and owing to the said defendant for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said *defendant* to said defendant; and in the like sum for goods, wares, and merchandise before that time sold and delivered by the said defendant to the said plaintiff at the like special instance and request of the said plaintiff; and in the like sum for the price and value of work then done and material for the same provided by the said defendant for the said plaintiff and at the like special request of the said plaintiff; and, being so indebted, the said plaintiff, in consideration thereof, afterwards, to wit, on day and year aforesaid and at the place last aforesaid, undertook and then and there faithfully promised the said defendant well and truly to pay unto the said defendant the several sums of money in this count mentioned when the said plaintiff should be thereunto afterwards requested.

And whereas also the said plaintiff afterwards, to wit, on the day and year last aforesaid and at the place last aforesaid, accounted together with the said defendant of and concerning divers other sums of money before that time due and owing from the
711 said plaintiff to the said defendant and then and there being in arrear and unpaid, and upon such accounting the said plaintiff then and there was found to be in arrear and indebted to the said defendant in the further sum of twenty thousand dollars of like lawful money as aforesaid; and, being so found in arrear and indebted to the said defendant, the said plaintiff, in consideration thereof, afterwards, to wit, on the day and year last aforesaid and at the place last aforesaid, undertook and then and there faithfully promised the said defendant well and truly to pay unto the said defendant the sum of money last mentioned when the said plaintiff should be thereunto afterwards requested.

Nevertheless the said plaintiff (although often requested, &c., to

wit, on the day when the said note became due and payable according to the tenor and effect thereof and oftentimes since, to wit, at the place last aforesaid) has not yet paid the said several sums of money above mentioned or any or either of them or any part thereof to the said defendant, but to pay the same or any part thereof to the said defendant the said plaintiff has hitherto wholly neglected and refused and still does neglect and refuse, to the damage of the said defendant of twenty thousand dollars, out of which said sum of money the defendant is ready and willing and hereby offers to set off and allow to the plaintiff *and* damages that he may recover under his said declaration; and this the plaintiff is ready to verify. Wherefore he prays judgment and his damages, &c., to be adjudged to him, &c.

ALBION CATE,
Att'y for Ira Foote, Def't.

712 *Copy of Account Sued on.*

$5,000.00. On the first day of July, A. D. 1877, the estate of Ira Couch, deceased, promise to pay to the order of Ira Foote, at their office in Chicago, Illinois, five thousand dollars, with interest at eight per cent. per annum, for value received.

WM. H. WOOD,
CAROLINE E. COUCH,
JAMES COUCH,
Trustees of Estate of Ira Couch.

I hereby guarantee the payment of the within note, for value received, at maturity.

IRA FOOTE,
By J. H. RICE, *Att'y-in-Fact.*

$5,000.00. On the first day of October, A. D. 1877, the estate of Ira Couch, deceased, promise to pay to the order of Ira Foote five thousand dollars, with interest at the rate of eight per cent. per annum, for value received.

Dated Chicago, July 1, 1876.

WM. H. WOOD,
CAROLINE E. COUCH,
JAMES COUCH,
Trustees of Estate of Ira Couch.

I hereby guarantee the payment of the within note, for value received, at maturity.

IRA FOOTE,
By J. H. RICE, *Att'y-in-Fact.*

713 Huntington W. Jackson, rec'v'r, to Ira Foote, Dr.

To money lent and advanced	$20,000 00
To money paid, laid out, and expended	"
To money had and received to and for use of said plaintiff	"
To goods, wares, and merchandise sold and delivered	"
To labor and services	"
To balance on account stated	"

By Col. JACKSON: Also the replication to each of said two pleas I introduce in evidence, which are as *as* follows:

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

In the Circuit Court of the United States, May Term, 1878.

HUNTINGTON W. JACKSON, Receiver, &c., } Assumpsit.
vs.
IRA FOOTE. }

And the plaintiff, by Lyman & Jackson, his attorneys, as to the plea of the defendant by him first above pleaded, and whereof he has put himself upon the country, does the like.

And the plaintiff, as to the pleas of the defendant by him secondly and thirdly above pleaded, says that he, the plaintiff, by reason of anything in those pleas alleged, ought not to be debarred from having his aforesaid action, because he says that the said several promises in said pleas and in plaintiff's declaration mentioned were made for a good and legal consideration and not in consideration of
714 money won by gaming, or for the purpose in the second and third pleas mentioned, in manner and form as the defendant has above in said pleas alleged; and this the plaintiff prays may be inquired — by the country.

LYMAN & JACKSON, *Pl'ff's Att'ys.*

By Col. JACKSON: Another replication, filed March 25th, 1882, is as follows:

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

In the United States Circuit Court, to the Dec. Term, A. D. 1881.

THIRD NATIONAL BANK OF CHICAGO }
vs.
IRA FOOTE. }

And the plaintiff, as to the plea of set-off — the defendant by him above pleaded, says that *if*, the pl'ff, by reason of anything in that plea alleged, ought not to be barred from having its aforesaid action, because it says that it, the plaintiff, was not nor is indebted to the defendant in manner and form as the defendant has above in that

plea alleged; and this the plaintiff prays may be inquired of by the country, &c.

By LYMAN & JACKSON, *Its Att'ys.*

715 By Col. JACKSON: In the declaration, pleas, and one of the replications aforesaid the cause was entitled H. W. Jackson, receiver of the Third National Bank of Chicago *v.* Ira Foote. Before the filing of the second replication, by leave of court the title of the cause was changed to Third National Bank of Chicago *v.* Ira Foote, and that replication, filed on the 25th day of March, 1882, is so entitled, and the judgment was rendered finally in the case as the judgment of The Third National Bank of Chicago *v.* Ira Foote.

I also offer in evidence the decision of Judge Blodgett, before whom said case was tried, a jury being waived, and which is reported in 11th Bissell, at page 223, the case there being entitled as it was when first brought, but the decision being rendered in the case after the title had been changed as above set forth.

I offer the pleadings in the foregoing cause and the opinion of the court therein for the purpose of showing that the identical question sought to be raised by cross-complainant Rice herein, namely, whether the two notes in said declaration named were given and received in a gambling transaction and were therefore void, was raised, litigated, and decided in the foregoing suit at law, and is therefore *res adjudicata* and it cannot be retried in this cause.

Mr. Thompson concurs in the foregoing statement.

The taking of further testimony adjourned to Tuesday, August 3d, 1886, at 11 o'clock a. m.

716 AUGUST 3RD, 1886.

Counsel present as before

ROBERT E. JENKINS, being first duly sworn, testified on behalf of Third National bank as follows:

By Col. JACKSON: What is your full name?

A. Robert E. Jenkins.

Q. What is your residence and your business?

A. Attorney-at-law; reside in Chicago.

Q. How long have you been an attorney?

A. About 18 years.

Q. Are you the receiver in this case, Third National Bank *v.* Foote?

A. I am.

Q. When were you appointed receiver?

A. I think the order was entered on the 31st day of October, 1882.

Q. Did you receive a deed of conveyance of any property from Ira Foote?

A. Yes, sir; deed was made to me as receiver.

Q. Will you produce it and have the stenographer make a copy of it, so it can be in evidence in this case?

A. I now produce it and a copy thereof may be made; which copy is as follows:

"This indenture, made this first day of November, A. D. 1882, by and between Ira Foote, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Robert E. Jenkins, as receiver of said Ira Foote in the case of The Third National Bank of Chicago against Ira Foote and others, defendants, in
717 the circuit court of the United States for the northern district of Illinois, on the chancery side thereof, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of one dollar in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, has assigned, remised, released, conveyed, aliened, confirmed, and quitclaimed, and by these presents does assign, remise, release, convey, alien, confirm, and quitclaim, unto the said party of the second part, as receiver as aforesaid, all the estate, real and personal, things in action, equitable interests, or other effects of the said party of the first part, including all notes, trust deeds, and property of whatsoever kind of which the said party of the first part is possessed or of which he is the owner or which he is entitled to have or in which he is interested:

To have and to hold the said property unto the said party of the second part, as receiver as aforesaid, subject to the order of said United States circuit court.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

IRA FOOTE." [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook. }

I, John P. Ahrens, a notary public in and for the said county, in the State aforesaid, do hereby certify that Ira Foote, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said
718 instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1st day of November, A. D. 1882.

[NOTARIAL SEAL.] JOHN P. AHRENS,
Notary Public.

Cross-examination waived.

By Col. JACKSON: I now desire to introduce the affidavit of Ira Foote, sworn to on the 1st day of November, 1882, and filed in this case. Said affidavit is as follows:

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

In the Circuit Court Thereof. In Chancery.

THE THIRD NATIONAL BANK OF CHICAGO }
vs. }
IRA FOOTE *et al.* }

Ira Foote, being first duly sworn, deposes and says that all the estate, real and personal, things in action, equitable interests, and all other property of whatsoever kind of which he is possessed or of which he is the owner or which he is entitled to have or in which he is interested, and which has been conveyed to Robert E. Jenkins, as receiver in the above-entitled cause, by a deed of conveyance of this affiant to said Robert E. Jenkins, as receiver as aforesaid, dated the 1st day of November, A. D. 1882, is as follows, to wit:

Three (3) notes dated January 20th, 1877, and payable in three years from date, and signed by William H. Wood, Caroline
719 E. Couch, and James Couch, trustees of the estate of Ira Couch, deceased. Two (2) of said notes are for the sum of $5,222.22 each, which said last-named two (2) notes are in the possession of S. W. Rawson in escrow, and are to be delivered to deponent upon the surrender to said Rawson of two other notes for $5,000 each, dated July 1st, 1876, and which two last-mentioned notes are in the possession of H. W. Jackson, receiver of the Third National Bank of Chicago, and are the same notes upon which said Third National bank recovered the judgment upon which the creditors' bill filed in the above-entitled cause is based.

The other note of said three notes first above mentioned is for the sum of $15,751.66, upon which payments have been made amounting to the sum of about $6,700, and which said last-named note is in the possession of Myron A. Decker and was placed in his possession by this deponent for collection, and said Decker claims to own one-quarter interest in this note, but said claim of said Decker is groundless, as this deponent insists and believes; all of which said notes are secured by deed of trust upon lot 2, in block 18, and lot 1, in block 19, in the original town of Chicago, in the county of Cook and State of Illinois, subject to a prior encumbrance upon this and a large amount of other property to the Connecticut Mutual Life Insurance Company for about $750,000.

Said note for said sum of $15,751.66 is also subject to what this affiant owes the firm of Bisbee, Ahrens & Hawley, and the said Myron A. Decker refuses to deliver said note to this affiant.

This affiant further says that he has a lot of old notes and accounts against which the statute of limitations has run and
720 which are worthless, but which this affiant is ready and willing to deliver to said receiver upon demand.

This affiant further says that he has no other property of any kind or nature whatsoever, except as hereinbefore stated.

IRA FOOTE.

Subscribed and sworn to before me this 1st day of November, A. D. 1882.

H. W. BISHOP,
Master in Ch'y.

By Col. JACKSON: I now desire to make a motion to strike out all testimony of James H. Rice and of Ira Foote relating to the assignment of any notes, or the notes known as the Couch-estate notes, upon which judgment was rendered against Ira Foote in favor of the Third National bank, of the assignment of those notes to Mr. Rice, the cross-complainant in this case, on the ground that these notes are shown by the deed of conveyance to have been previously *been* assigned under order of the court to R. E. Jenkins, the receiver in this case, and any assignment of these notes by Mr. Foote to Mr. Rice would be in violation of the injunction heretofore issued in this case.

721 AUGUST 3RD, 1886.

JOHN H. THOMPSON, being first duly sworn, testified on behalf of Third National bank as follows:

By Col. JACKSON: State your full name.

A. John H. Thompson.

Q. What is your business?

A. I am a lawyer.

Q. How long have you been an attorney?

A. Since 1854.

Q. Were you a director and the attorney of the Third National Bank of Chicago at any time?

A. Yes, sir; I was a director and attorney of the Third National bank in 1876 and 1877.

Q. You have seen the two notes known as the Couch-estate notes introduced in evidence and in the possession of the receiver of the Third National bank, being the same notes upon which judgment was rendered in the United States circuit court for the northern district of Illinois in favor of the Third National Bank against Ira Foote?

A. Yes, sir.

Q. When did you first see those notes?

A. I think I saw them within a day or two of the time the bank received those notes, but I remember distinctly looking at the notes some short time afterwards, when Mr. Pearce one day showed me a copy of the summons and a writ of injunction issued, I think, out of the superior court of Cook county at the suit of Ira Foote
722 against Mr. Hooker and several others, among whom was the wife of J. Irving Pearce. One day Mr. Pearce showed me the summons and represented that it had been served upon his wife, and at the time he went into the bank and brought out the envelope containing all the papers in regard to the claim of the bank against S. G. Hooker & Company, and took out these two Couch notes, and I recollect looking at them at that time particularly to see when they became due, and to see if there was anything

about them to indicate that there was any defect in them. I knew that the bank held such notes some little time before that—I should say as much as two weeks—and I think I saw the notes, but I didn't pay any particular attention to them at that time.

Q. When you had this conversation with Mr. Pearce what time was that, with reference to the time of the bringing of the injunction suit, testified to by Mr. Kretsinger?

A. I think it was within 2 or 3 days after the date of the summons.

Q. You say you had seen these Couch-estate notes in the possession of the bank some time prior to that?

A. I think I saw the notes before that. I knew the bank had such notes, but I never paid any particular attention to them before that time.

Q. You knew that the firm of S. G. Hooker & Company was indebted to the Third National bank?

A. Yes, sir.

Q. How long had you known that fact?

A. My recollection is that a little before the first of January the directors had desired to straighten up matters, and that a list of all overdrafts and past-due paper was made out, and the
723 claim against S. G. Hooker & Company was in that list. I think the list was read over in the meeting of the directors and afterwards given to me, and I had it in my possession for a time with a view to straightening up matters, to collect what we could and get security where we couldn't collect the money; but I didn't pay particular attention to that claim, although it was on the list, because Mr. Pearce was attending to it himself.

Q. Do you know when Mr. Parsons, the cashier of the bank, died?

A. Yes, sir; I know about the time.

Q. About what time was it?

A. It was near the first of November, 1876.

Cross-examination.

By Mr. BISBEE:

Q. Have you any distinct recollection of ever seeing those two Couch-estate notes until after the chancery suit was commenced in January, 1877?

A. No; I have no very distinct recollection of seeing them before that time.

Q. Then when you speak about the bank's having them it is hearsay, isn't it?

A. It is mostly, I think, from what I was told by Mr. Pearce in the bank, although I have a strong impression that he had in his hands the collaterals, and I have an impression that he showed me those Couch-estate notes as being the most valuable collaterals that he had got on that claim.

Q. That is an impression in your mind?

A. It is not very distinct.

Q. It is not so strong that you want to state it as an absolute fact?

724 A. No, I wouldn't say that I looked at the notes positively, although it is a very strong impression that I did.

Q. You have talked this up with Mr. Pearce lately, haven't you?

A. I had a little conversation with him a few days ago about it.

Q. He has told you, hasn't he, that he did so and so at the time; refreshed your recollection?

A. No; I don't think he did. He spoke of some things that I didn't remember and don't remember particularly about.

Q. He has been trying to jog your memory a little, hasn't he, on some of the things, lately?

A. No; I don't know that he did particularly; perhaps he said something with that view.

Q. You are the same John H. Thompson who appears here as counsel for Mr. Pearce in this case, are you?

A. Yes, sir.

By Mr. JACKSON: Did Mr. Pearce talk to you first about these notes or did you speak to him first, in this recent conversation to which Mr. Bisbee alluded?

A. I think I commenced the conversation.

Q. You commenced the conversation about these notes?

A. Yes, sir.

725 AUGUST 3RD, 1886.

J. IRVING PEARCE recalled by Mr. RIDDLE:

Q. At the time the injunction writ was served upon Mrs. Pearce in January, 1877, did she have any ownership in the notes—the Couch-estate notes?

A. No, sir.

Q. She had no interest in them?

A. She had no interest in them.

Q. To whom did the notes then belong?

A. Belonged to the Third National bank as collateral security for the indebtedness of S. G. Hooker & Company.

By Mr. BISBEE: I move to expunge the statement made here by Mr. D. K. Tenney as not called for by any question. Counsel for Mr. Rice was not present, and it is immaterial and improper in any aspect of the case.

By Col. JACKSON: The testimony was taken with the understanding with Mr. Bisbee that he should cross-examine Mr. Tenney if he so desired.

By Mr. BISBEE: The facts are these: Mr. Jackson called on me at my office and said that he wanted to ask Mr. Tenney three or four questions in relation to what Mr. Hooker testified to about the books, and also impeaching questions, and I was busy and said he might ask those, and I reserved the right to cross-examine, but there was no agreement that there should be a long statement interjected

726 here when no question was asked.

By Col. JACKSON: With reference to the statement, after

the question was propounded to Mr. Tenney he said that that statement by Mr. Hooker involved his reputation as a lawyer, and he desired to make an explanation of the facts connected therewith, and the statement was made as such explanation on Mr. Tenney's own request.

727 AUGUST 3D, 1886.

FRANK A. CRITTENDEN, being first duly sworn, testified on behalf of Third National bank as follows:

By Col. JACKSON: State your name in full.
A. Frank A. Crittenden.
Q. Where do you live?
A. Evanston.
Q. What is your business?
A. Commission merchant.
Q. Are you a member of the board of trade?
A. Yes, sir.
Q. How long have you been a member of the board of trade?
A. Oh, 8 or 10 years; something like that.
Q. Are you acquainted with Stephen G. Hooker?
A. I am.
Q. How long have you known him?
A. About 8 years.
Q. Do you know what his reputation for truth and veracity is in the community where he resides?
A. So far as I know——
Q. Do you know what it is?
A. No; I do not. Well, I will modify that; I do know what it is.
Q. What is that reputation?
A. It is very bad.
Q. Would you believe him under oath?
A. I would not.
Q. In a matter where he was interested?
728 A. No, sir.

Cross-examination waived.

AUGUST 3D, 1886.

DANIEL L. SEYMOUR, being first duly sworn, testified on behalf of Third National bank as follows:

By Col. JACKSON: State your name in full.
A. Daniel L. Seymour.
Q. Where do you reside?
A. Chicago.
Q. How long have you lived in Chicago?
A. Thirty years.
Q. What is your business?
A. Storage business.
Q. Are you a member of the board of trade?
A. I am.

Q. Do you know Stephen G. Hooker?
A. I know a man by that name; yes, sir.
Q. How long have you known him?
A. I should say twenty years; maybe more.
Q. Do you know what his reputation is for truth and veracity in the neighborhood where he lives, or in the community?
A. You mean by that in a general way in Chicago?
Q. Yes.
A. Yes, sir; I think I know.
Q. What is that reputation?
A. Not the best. I should say it was bad.
Q. Would you believe him under oath in a matter where
729 he was personally interested?
A. I would not.

Cross-examination.

By Mr. BISBEE:

Q. Where does Mr. Hooker live?
A. I don't know just where he does live now. The last I knew anything about him he was on the North Side, out somewhere in the vicinity of Lincoln park; don't know just where it was.
Q. When did you first get acquainted with him?
A. As near as I can remember, somewhere in 1865 or 1866; along there somewhere; don't just recollect.
Q. What was Mr. Hooker's business at that time?
A. He was connected in some way with the firm of Sherman, Hall & Pope.
Q. What was the business?
A. Commission merchants, on South Water street.
Q. In what kind of business were they engaged?
A. I think a general commission business—grain.
Q. Did they do business on the board of trade?
A. Yes, sir; also had a store on South Water street.
Q. What kind of a store?
A. Selling produce.
Q. Was Mr. Hooker a member of the board of trade?
A. I don't know whether he was at that time or not.
Q. When did he become a member?
A. That I don't know.
Q. Is he still a member?
A. My impression is not. I have no personal knowledge
730 as to that; don't think he is.
Q. He did no business as a commission merchant for a good many years, did he?
A. Later; yes, sir.
Q. On the board of trade?
A. Afterwards; later; yes, sir.
Q. And he got up a bad reputation on the board, didn't he?
A. Considered so; yes, sir.
Q. People distrusted him on the board of trade, didn't they?

A. Yes, sir; I think it resulted in that.

Q. Distrusted his integrity as well as his truthfulness, didn't they?

A. That seemed to be the general reputation of the man.

Q. And on the board of trade people had no confidence in the man, did they?

A. I think of late years they hav-n't had.

Q. Hasn't that existed for quite a good many years—kind of a distrustful feeling of him?

A. For several years.

Q. Isn't it true that there has been quite a distrustful feeling in relation to Stephen G. Hooker on the Chicago Board of Trade for at least 10 or 12 years last past?

A. Not extending to all parties, for, if I remember right, he has been in business there within that time.

Q. Let me refresh your recollection. When he was with George D. Lincoln S. G. Hooker & Company failed, in either May or June, 1876; something over 10 years ago; that is a matter of fact.

A. I remember their failure.

731 Q. Isn't it true that at least from that time Mr. Hooker had been in bad repute on the board of trade as a man whose word was not good and whose business habits were bad; isn't that so?

A. He has not had a good reputation since that time and in many respects prior to that; still he has been able to get partners and go in business.

Q. Yes; but I mean was there not a distrustful feeling on the board of trade even prior to his failure in relation to Mr. Hooker's methods of doing business?

A. Yes, sir; that would hold good with a good many members of the board.

Q. And he has been badly out of repute on the board of trade for at least 10 or 12 years?

A. I think so.

Q. And when you speak of his neighbors you mean more particularly among the members of the board of trade and where he used to associate and is known?

A. My relations with him, or my knowledge of the man, are in business circles.

Q. Not in a social way?

A. No.

Q. You know very little about his social relations?

A. I am happy to say I haven't been socially connected with him.

Q. In business matters you know he has been in bad repute, as you have stated?

A. Yes, sir; that is so.

Q. Hasn't it been so bad that a good many firms wouldn't even do business with him on the board of trade?

A. Yes, sir.

732 AUGUST 3D, 1886.

LAFAYETTE H. SMITH, being first duly sworn, testified on behalf of the Third National bank as follows:

By Mr. RIDDLE: State your name in full.

A. Lafayette H. Smith.

Q. Where do you reside?

A. 3035 Groveland avenue.

Q. In this city?

A. Yes, sir.

Q. How long have you lived in Chicago?

A. Have been here steadily since 1856; previous to that was here off and on—51 years in all.

Q. What is your business, Doctor?

A. I am conducting a collection association.

Q. Do you know Stephen G. Hooker?

A. Yes, sir.

Q. How long have you known him?

A. Since June, 1876.

Q. Do you know whether he is a resident of this city or not?

A. Yes, sir.

Q. This is his home?

A. Yes, sir; just now he is in Sweden.

Q. Do you know what his reputation for truth and veracity is in the community where he resides?

A. My knowledge of him, of course, is in connection, not with his neighbors and friends, but his business transactions on the board of trade.

733 Q. Do you know what his reputation is for truth and veracity?

A. I think I do; yes, sir.

Q. In this community?

A. Yes, sir.

Q. What is it?

A. I think it is bad.

Q. Would you believe him under oath?

A. No, sir.

Q. In a matter where he is interested?

A. No, sir.

Cross-examination.

By Mr. BISBEE:

Q. Didn't you know him before June, 1876?

A. No, sir.

Q. Your business relations with him have been such that you have since found out what his reputation was before June, 1876, haven't they?

A. Yes, sir.

Q. Don't you know now that his reputation on the board of trade, where he did business almost ever since he has been doing business there, was bad? Don't you know that now?

A. I will state this, that after I formed a partnership with him, although I spent two or three weeks in making inquiries in regard to him, I didn't find anybody that spoke particularly ill of him, but after I formed the partnership with him and found myself on the board of trade I saw that people were whispering and squinting and acting as if they thought I had got into a bad scrape.

734 Q. They were distrustful of him?

A. Yes, sir.

Q. It is true that since you formed your partnership with him, in June, 1876, you have learned since that his reputation was bad on the board before that?

A. Yes, sir; very bad.

Q. And that the members of the board were distrustful of his methods of doing business?

A. Yes, sir; there are persons—this very Mr. Seymour's brother sent word to me or told my relatives to have me get out; that he was a very bad man.

Q. This Mr. Seymour who has just testified?

A. Yes, sir; and his brother.

Q. Sent word to you that he was a bad man?

A. Yes, sir.

Q. And you found it to be true that he was a bad man?

A. Yes, sir; and J. W. Doane——

Q. And that his business methods were bad?

A. Were entirely unprincipled.

Q. He had no principle in doing business?

A. Not a particle; man without a conscience.

Q. In the matter of his business?

A. Yes, sir.

By Mr. RIDDLE: And in telling a story and telling the truth?

A. He was a man that it was a thousand times easier to tell a lie than to tell the truth.

Q. Would do it always when he had a chance?

A. Couldn't find a man in this city that could stand up and tell as many lies without flinching.

By Mr. BISBEE: Could you find a man in this city that

735 would do so many crooked things in business?

A. No, sir; one of the worst-principled men I ever saw.

Q. You never knew a man in your life who was so near the doctrine of total depravity as he is?

A. No, sir; I never saw a more infamous scoundrel.

Q. Both in act and in word?

A. No, sir; no more infamous scoundrel.

AUGUST 3D, 1886.

MAYHEW A. SEYMOUR, being first duly sworn, testified on behalf of Third National bank as follows:

By Mr. RIDDLE: State your name in full.

A. Mayhew A. Seymour.

Q. Where do you reside?

A. In Chicago.

Q. What is your business?
A. I am a commission man.
Q. On the board of trade?
A. Yes, sir.
Q. You are a member of the board of trade?
A. Yes, sir.
Q. How long have you lived in Chicago?
A. Thirty-two years.
Q. Do you know one Stephen G. Hooker?
A. Yes, sir.
Q. How long have you known him?
A. Well, I have known him, I should think, 25 years. I don't know exactly how long; probably about 25 years.

736 Q. Where does Mr. Hooker live; where is his home?
A. Don't know where it is now; haven't seen him for some time. I suppose, however, he lives in Chicago; I don't know.
Q. Do you know what his reputation for truth and veracity is in the community where he lives in this city?
A. I know something of it; yes, sir.
Q. What is it?
A. I shouldn't judge it was very good.
Q. Please state what it is.
A. Well, I don't know that I can state, except my opinion.
By the MASTER: It is not your opinion, but your knowledge of what other people say and what reputation has come from what other people say.
A. I know a good many people who don't speak very well of him, but don't know that I can state in exact terms what they say.
Q. I don't mean that. There is a difference between a good reputation and a bad reputation. What is the reputation of Mr. Hooker in this community?
A. Among mutual acquaintances, those who know him and whom I know, it is very bad.
Q. Would you believe him under oath in a matter where he was interested?
A. No, sir.

737 Cross-examination.

By Mr. BISBEE:

Q. He has a reputation of being crooked in his business transactions, hasn't he?
A. I believe he has.
Q. And has had for many, many years, hasn't he.
A. Yes, sir.
Q. That is, his reputation for truth and his reputation for business methods are both bad, are they?
A. Yes, sir.
Q. And it has been some 15 years, hasn't it?
A. Yes, sir; I should judge so.

Q. And that is the way he stands and has stood on the board of trade in the city of Chicago?

A. Yes, sir.

Q. Where he has done business?

A. Yes, sir.

Q. And people up there for many, many years have been distrustful of his methods of doing business, haven't they?

A. Yes, sir.

738 EXHIBIT A TO RICE. E. B. S., Master.

Copy of Check.

No. 1892. CHICAGO, *June* 29, 1876.

Union Trust Company.

Plate & window glass.

Pay to Mrss. S. G. Hooker or order twenty-one hundred sixty-five $\frac{73}{100}$ dollars.

$2,165\frac{72}{100}$. JAMES H. RICE.

[Written across the face in red ink:] Copy.

Endorsed as follows:

Pay J. B. Norton or order. S. G. Hooker & Co., J. B. Norton.

The above written by me and *and* is a copy of an original check which was paid; therefore this check is void.

739 EXHIBIT A OF 3RD NAT. B'K. E. B. S., Master.

EXHIBIT "C."

Ira Foote in acc. with S. G. Hooker & Co., 1875–'76.

DR.

1875.			
Sept.	8.	To diff. & charges on 5 M corn, $76\frac{3}{8}$–63	706 25
"	"	" charges on 15 M corn	75 00
"	20.	" diff. & ch'g's 10 M corn	200 00
Oct.	29.	" " " 10 M "	728 80
Dec.	30.	" " " 30 M " (carried cash)	2,352 13
"	31.	" " " 10 M " " "	131 89
"	"	" charges on 20 M	100 00
1876.			
Feb.	14.	" " " 250 tcs. lard	49 40
M'ch	2.	" diff. on 250 bbls. pork	218 75
Apr.	5.	" charges on 10 M wheat	50 00
"	27.	" diff. & charges on 250 bbls. pork	108 83
"	"	" " " " 250 tcs. lard	634 56
"	28.	" " " " 15 M corn (carried cash)	779 35
May	3.	" " " " 40 M " (changed to June)	1,225 00
"	5.	" " " " 250 tcs. lard	971 40
"	15.	" diff. of interest on ac. to date	153 30
			8,484 66

CR.

Sep.	8.	By diff. on 15 M corn	650 00
Dec.	31.	" " " 10 M "	156 25
"	31.	" " " 20 M "	387 50
Feb.	14.	" " " 250 tcs. lard	240 00
Apr.	5.	" " " 10 M wheat	56 25
"	28.	" " " 15 M corn	37 50
			1,527 50
		Amount to dr., Ira Foote	8,484 66
		" " cr., " "	1,527 50
		Bal. due S. G. Hooker & Co.	$6,957 16

E. O. E.

CHICAGO, *May* 15, 1876.

Memorandum.

We now have bought for your account 50,000 bu. of corn, seller June, at an average cost of about 45¾.	
We hold your notes dated May 27, 1875, for	12,753 50
Say int. on same to date, about	1,232 80
Balance on book ac.	6,968 16
	$20,943 46

740 EXHIBIT "B" OF 3RD NAT. B'K. E. B. S., Master.

EXHIBIT "D."

Ira Foore in acc. with S. G. Hooker & Co., 1874.

DR.

1874.			
Nov.	7.	To diff. on 15,000 wheat, bo't Nov., changed to Dec.	400 00
Dec.	3.	" coms. on 15,000 wheat	75 00
"	3.	" c'y paid Foote	10 00
"	5.	" c'y paid Foote	40 00
"	10.	" c'y paid Foote	200 00
"	23.	" check paid to Mrs. Hooker	25 00
"	24.	" c'k paid Foote	100 00
1875.			
Jan'y	1.	" bal. to ledger D. F. 397	175 00
			$1,025 00

1875.				
Jan'y	2.	To coms. on 15,000 oats		75 00
"	2.	" c'y paid Foote		20 00
"	5.	" c'k paid Foote		1,000 00
"	18.	" coms. on 10,000 wheat		50 00
"	18.	" c'y paid Foote		15 00
"	20.	" c'y for Norton't boots		16 00
Feb'y	1.	" coms. on 5,000 wheat		25 00
"	1.	" diff. and com. on 5,000 wheat changed to April		75 00
March	1.	" diff. and com. on 5,000 wheat		287 50
"	27.	" c'y paid Foote		200 00
Apr'l	1.	" diff. on 5,000 wheat		18 75
"	2.	" coms. on 35,000 wheat		175 00
"	19.	" coms. on 250 tcs. lard		114 00
"	21.	" paid W. & J. Rogan brokerage on 500 tcs. lard		25 00
"	22.	" coms. on 10,000 wheat		50 00
"	24.	" proceeds of 5,000 wheat paid Mess. Wadsworth		75 00
May	3.	" diff. on 15,000 corn		131 25
"	3.	" coms. on 35,000 corn		175 00
"	3.	" coms. on 15,000 wheat		75 00
"	1.	" 30,000 bu. corn paid for cash		23,755 92
"	6.	" check paid Foote		150 00
"	19.	" A. L. Hale's bill for char. for Mrs. Hooker		38 00
"	31.	" diff. and coms. on 20,000 wheat		2,618 75
"	31.	" diff. and coms. on 30,000 corn		2,456 25
June	1.	" diff. and coms. on 750 June lard		4,137 30
"	1.	" charges on 30,000 cash corn: Storage, $120.54; insurance, $157.50; coms., 150		728 04
"	1.	" 250 tcs. cash lard, paid for		12,600 62
"	7.	" Charges on 250 tcs. lard: Storage, $30.00; ins., $22; coms., $117.89		169 89
"	7.	" interest on carrying 30,000 cash 27 days		178 17
				$49,435 44

Cr.

1874.				
Dec.	3.	By diff. on 15,000 Dec. wheat		1,025 00
1875.				
Jan.	1.	By bal. brought forward		175 00
"	2.	" diff. on 15,000 oats		1,081 25
"	18.	B- diff. on 10,000 wheat		218 75
Feb.	1.	" diff. on 5,000 wheat		143 75
741				
Apr.	1.	" diff. on 30,000 wheat		1,050 00
"	19.	" diff. on 250 tcs. lard		240 00

Apr.	22.	B-	diff. on 10,000 wheat	1,131 25
"	24.	"	diff. on 5,000 wheat	75 00
May	3.	"	diff. on 20,000 corn	487 50
"	3.	"	diff. on 15,000 wheat	1,375 00
June	1.	"	sale of 30,000 cash corn	19,704 99
June	7.	"	sale of 250 tcs. cash lard	10,999 45
June	7.	"	note at 60 days (May 27 to balance account)	12,753 50
				$49,435 44

EXHIBIT "B," 3RD NAT'L B'K. E. B. S., Master.

EXHIBIT "D"—Continued.

1875.				
Sept.	8.	To	diff. and com. on 5,000 corn	706 25
"	8.	"	coms. on 15,000 corn	75 00
"	20.	"	diff. and coms. on 10,000 corn	200 00
Oct.	29.	"	diff. on 10,000 cash corn	625 00
"	29.	"	charges on above 10,000 cash corn. Storage, $22.61; ins., $17.50; coms., —; int., $13.69	133 80
Nov.	30.	"	interest on balance of above account	13 45
Dec.	30.	"	diff. and charges on 30,000 cash corn: Diff., $1,712.50; storage, $159.27; ins., $131.50; int., $198.86; coms., $150	2,352 13
Dec.	31.	"	charges on 10,000 cash corn: Ins., $30.00; storage, $7.97; int., $43.92; coms., 50	131 89
Dec.	31.	"	coms. on 20,000 corn	100 00
1876.				
Feb.	14.	"	coms. on 250 tierces lard	49 40
March	2.	"	diff. on 150 M'ch pork changed to May	218 75
April	5.	"	coms. on 10,000 wheat	50 00
"	27.	"	diff. and coms. on 250 pork	108 83
"	27.	"	diff. and coms. on 250 tcs. lard	634 56
"	28.	"	charges on 15,000 cash corn: Storage, $450; ins., $80.40; int., $173.95; com., $75	779 35
May	3.	"	diff. and charges on 40,000 corn: ¼c. charged for changing over	1,225 00
"	5.	"	diff. and coms. 250 tcs. lard	971 40
"	15.	"	int. on bal. of above account	139 85
				$8,484 66

1876.				
May	15.	"	bal. of account brought forward	6,957 16
"	31.	"	diff. and coms. on 50,000 corn	1,356 25
June	16.	"	interest on bal. of above account	65 11
				$8,378 52

1875.			
Sep. 8.	By diff. on 15,000 corn		650 00
Dec. 31.	" diff. on 10,000 cash corn		156 25
" 31.	" diff. on 20,000 cash corn		387 50
Feb. 14.	" diff. on 250 tcs. lard		240 00
April 5.	" diff. on 10,000 wheat		56 25
" 28.	" diff. on 15,000 cash corn		37 50
May 15.	" balance carried forward		6,957 16
			8,484 66
1876.			
May 31.	By rebate of ½ coms. on 125,000 bu. grain		312 50
June 20.	" received note and cash to bal. account		8,066 02
			$8,378 52

Endorsed: Filed March 3, 1887. Wm. H. Bradley, clerk.

742 (*Testimony of S. E Douglas.*)

In the Circuit Court of the United States for the Northern District of Illinois.

THIRD NAT. BANK, Complainant,
vs.
IRA FOOTE *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, the 31st day of July, A. D. 1884.

Present: Mr. Jackson, for compl't; Mr. Bisbee, for def't; Mr. Thompson, for Pearce.

S. E. DOUGLAS, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. BISBEE, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
A. S. E. Douglas; residence, Chicago.
Q. What was your business in the years 1876 and 1877?
A. I was note teller in the Third National bank.
Q. You remained note teller up to the time the bank went out of business?
A. Yes, sir.
743 Q. You were in that position, then, in the month of December, 1876?
A. Yes, sir.
Q. Have you the books of the Third National bank before you?
A. Yes, sir; part of them.
Q. Examine the note now shown you, dated December 30, 1876, for $13,912.97, signed S. G. Hooker & Co., payable to the Third

National bank, and state if in the course of business you have all the books present which would show all the entries in relation to the notes or the securities deposited with the Third National bank as security.

A. I have the book here that shows the entry, the date it was put through, and the credit that was made on it.

Q. Do you know of any other books and are there any other books that would show any entries of it?

A. No other books.

Q. You may now state the name of the book that is before you, what it is called in the bank.

A. Discount register.

Q. Have you any entry on said discount register kept by the Third National bank of the note described in any former question?

A. Yes, sir.

744 Q. Please read to the reporter that entry as it appears upon that book, giving the page and book.

A. Page 211 of the discount register, S. G. Hooker, maker of the note and sundry notes as collateral, it says here, and the note is dated December 30, 1876, for 90 days, due April 2, 1877; amount of the note, $13,912.97.

Q. When was the entry that you have just read made upon said book?

A. January 11, 1877.

Q. Do you know why that entry was made January 11, 1877?

A. I know by the books.

Q. State.

A. It seems to be credited to balance his account—his overdraft on the ledger.

Q. That is, S. G. Hooker & Company's overdraft?

A. Yes, sir; that is what that book shows.

Q. Explain fully what the books do show in relation to the overdraft, and the reason of this note being credited up to Hooker & Co. as to date.

A. It was credited the same day it went through here, January 11, 1877, $13,912.97—credited to his account.

Q. Was that the amount of S. G. Hooker — Co's overdraft on that date?

A. Yes, sir; that balances the account.

Q. Was there any collaterals that were put up by S. G. Hooker & Co. with the note before the 11th of January?

745 A. There is nothing shown here.

Q. Now, have you any book or was there any book kept by the Third National bank showing the list of collaterals that the Third National bank held as security for that note or partial security?

A. The note shows; it is written in the note.

Q. Have you anything outside of it?

A. I don't think there is; I didn't have any such record.

Q. Then, as I understand you, you don't know of any book hav-

ing been kept in the Third National bank on which appeared the collaterals described in the principal note?

A. No, sir.

Q. Look at the securities described in that note and state if you have any personal knowledge in relation to them.

A. I could not say I had, although the thing is familiar to me and I remember the names and all that.

Q. You haven't any knowledge sufficient for you to testify what became of them?

A. Nothing but the entries.

Q. Give any of the entries you find on the books of the Third National bank in relation to any of those securities.

A. The endorsements on the back of this note are shown on the book.

Q. Give what appears on the book.

746 A. They are the same thing; the one I wrote and the other I did not. February 8, 1877, there is a credit of $1,024.83; February 23, there is a credit of $1,024.82, and another of $86.33, and on the 24th there is a credit of $737. September 8th, there is a credit of $3,224.86 and $126.53.

Q. Have you given to the reporter all the credits appearing upon the books of the bank derived from collections or money realized out of those collaterals?

A. I have given what is down here; that is all I can say.

Q. So far as you know, it is all?

A. So far as I know.

Q. Do you know of any collection or money in any way realized out of those collaterals, except as you have given it?

A. No, sir.

Q. Do you know of any other books that were kept in the Third National bank at the time that would give any further information in relation to any collections realized out of those collaterals?

A. No, sir.

Q. If there were any such books would you know it?

A. Yes, sir, of course; I should have it.

Signature waived.

747 (*Testimony of J. Irving Pearce.*)

Testimony taken before Henry W. Bishop, master in chancery, on July 31st, A. D. 1884.

Present: Mr. Jackson, Mr. Bisbee, Mr. Thompson.

J. IRVING PEARCE, a witness on behalf of defendant, being first duly sworn, was examined in chief by Mr. BISBEE, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

A. J. Irving Pearce.

Q. State what your connection was with the Third National bank in 1876 and 1877.

A. I was president of the Third National bank.

Q. Did you personally have knowledge of the transactions of the bank with Hooker & Co.?

A. Yes.

Q. You were acquainted with Mr. Hooker and Mr. Lincoln, who composed that firm?

A. Yes; very well.

Q. You may state what the consideration of the note dated December 30, 1876, for $13,912.97, signed by S. G. Hooker & Co., was, and state how it came to be given.

A. It was for money due the Third National bank.

Q. From that firm?

748 A. From the firm of S. G. Hooker & Co.; the money they checked out in paying for grain.

Q. That was given for that account?

A. For the balance of the overdraft.

Q. Did that note balance your account at that time?

A. It balanced it up to and including the 29th of December, 1876.

Q. You heard the testimony of Mr. Douglas in relation to what appeared on the book?

A. Yes.

Q. Do you know of any other entries in the book in relation to that note or the collaterals secured on it except what Mr. Douglas has described?

A. I know of no others, except the notes that are in here would be likely to be entered upon the collection book, so we might know the date of maturity.

Q. That collection book is not present?

A. No, sir; but it is not a book that would have any bearing on the account. All the securities that were in my hands or in the bank and everything I could, I got. If there was any security it was not mentioned in that book.

Q. No other securities in your possession or in the possession of the bank?

A. Yes.

Q. Every security that the bank had for this note is named in the note itself?

A. Yes.

Q. The first collateral named on this note appears to be in

749 these words: "One note of even date for $3,000, which is secured by mortgage on elevator in Grinnell, Iowa." State what became of that collateral and what disposition you made of it and the story of it generally.

A. There was a settlement made, and after deducting attorneys' fees, &c., there was a credit made on this note of $3,224.86, on February 28, 1877.

Q. That accounts for that Grinnell note, does it?

A. Yes.

Q. The next item reads in these words: "Six notes signed Alberger." State, if you know, what amount there was on those notes.

A. I could not tell the amount.

Q. State where Mr. Alberger resided.

A. Buffalo.

Q. Do you know what those notes were given for?

A. Shortage in account of S. G. Hooker & Co.; and we collected, I think, on it twice; on collection of $86.33, February 23, 1877, and the other was on September 8th, of $126.53. That is all we ever got.

Q. State, as near as you can recollect, what the amount of those——

A. They were small notes. The principal note I gave to Mr. Hooker, to have it signed, and there was a judgment on the bottom of this. There were several of these notes which we expected
750 to get in there. I sent over for them. He came back with this note. I made him go back and get those.

Q. You prefer not to state any more minutely in reference to the Alberger notes?

A. No, sir.

It is understood that Col. Jackson, the receiver, will furnish a statement of the amount of those notes, which is to be considered in evidence.

Q. The next item on the note reads as follows: Two notes signed by F. Bishop. State what became of those notes.

A. What was collected was credited on the note.

Q. Read the date and amount.

A. February 8th, $1,024.83, and February 23, 1877, $1,024.83.

Q. Was that the full amount of those two notes?

A. My recollection is it was not—that it was a compromise.

Q. Who was this Mr. Bishop; where did he reside, if you know?

A. Albany, New York.

Q. Your recollection is they were a compromise?

A. My recollection is that, but I won't be positive about it. It would indicate here they were paid in full; from the evidence they were paid in full.

751 Q. Upon reflection you think the notes were paid in full and endorsed on the back of the note?

A. Yes, sir.

Q. And this endorsement was the result of the collections?

A. Yes, sir.

Q. The next item is two notes signed by Vinden. State what you know about those two notes.

A. Those we collected all we could.

Q. Where did he live?

A. Port Hope, Canada. I went down there and had to take a man with me.

Q. What appears on the back of the principal note in relation to those?

A. On May 13th, 1878, there was collected and endorsed here $1,721.16. That, of course, would be less expenses on it.

Q. Was that a payment in full, do you know, or a compromise?

A. I think it was for the note in full.
Q. Two notes?
A. Yes, sir.
Q. That was the result of both notes?
A. Yes, sir. It was reduced to pounds and pence.
Q. The next item reads, "And 90 tierces of ham." State what you know about those.
A. Paid January 18, 1877, proceeds of 60 tierces of ham.
Q. You are now reading from the back of the note?
752 A. Yes, sir; I find on February 24, 1877, they *they* were credited here, I presume, by mistake.
Q. On the back of the note?
A. Yes, sir; as lard, but we had no lard, and I know it was the ham.
Q. Give the whole story as fully as you can.
A. You will find it in the testimony I gave once before, and the books were examined at that time.
Q. I understand you to say the entry is on the back of the note in these words: "1,121.39 paid January 18, 1877, proceeds of 60 tierces of ham." Is that the entry on the back of the note?
A. Yes, sir.
Q. That is the entry you referred to in your last answer?
A. No, sir.
Q. What was it?
A. $737.00, February 24th entered as lard. We never had it. This was ham instead of lard.
Q. Was it your understanding that on the 18th of January, 1877, 60 tierces of these hams were sold and realized $1,121.93?
A. Yes, sir.
—. And that on the 24th of February it is your understanding the balance of the hams were sold and realized $737?
A. Yes, sir.
753 Q. And that the word "lard" on the back of the note should have been hams?
A. Yes, sir.
Q. And that those two items constitute all that was realized out of the 90 tierces of ham?
A. Yes, sir.
Q. In fact there was no lard put up with the bank?
A. No, sir.
Q. And there was 90 tierces of ham?
A. Yes, sir.
Q. Have you any personal recollection in relation to the sale of those hams?
A. Yes, sir; some.
Q. And those are the amounts realized?
A. Yes, sir.
Q. You have now referred to all the endorsements on the note except the last one of $1,570.45?
A. Yes, sir.
Q. You may state briefly what that is.

A. That is a dividend I paid under protest, claiming I had no right to pay it because the creditors objected to it, and that he should depend on the collaterals in his hands—the receiver of the bank should—and he said, "That should make no difference. If I had that right it would protect it."

Q. You did pay it to Mr. Jackson, the receiver?

A. Yes, sir.

Q. You paid it on the day it is endorsed on the note?

754 A. Yes, sir.

Q. Was there ever any other money realized by the Third National bank, to your knowledge, from any source applicable to that note other than what you state?

A. No, sir.

Q. No other property came into the hands of the Third National bank that had been converted into money excepting that?

A. No, sir.

Q. Was there any other property ever came into the hands of the Third National bank or its receiver excepting what you have testified about and the Couch-estate note?

A. No, sir; that is all, to my knowledge.

Q. There is no money, to your knowledge or information in any form, that is applicable to that note excepting what is endorsed on it?

A. No, sir.

Q. If there had been you would have known it?

A. Yes, sir; very likely to. Mr. Jackson might have collected something on the Alberger notes that I would not know.

Cross-examination.

By Mr. JACKSON:

Q. Please state what the last endorsement of $1,570.45, which is endorsed on the note, represents.

755 A. That was the certificate of the Third National bank I held as assignee of S. G. Hooker & Co. I turned that over and applied it on that.

Q. You declared a dividend to all the creditors?

A. Yes, sir.

Q. And this sum of $1,570.45 was the share due the Third National bank?

A. Yes, sir; from that source.

Q. When were you made assignee of Hooker & Co.?

A. I have forgotten exactly the date. I think February or March, 1877.

Q. How were you made assignee—by an instrument in writing?

A. Yes, sir.

Q. Have you the original of that instrument here?

A. No, sir.

Q. Will you produce a copy of it and make it a part of this deposition?

A. Yes, sir.

Q. Please state whether you have ever claimed from the receiver of the Third National bank, in case he should collect a judgment which was rendered in this court against Ira Foote April 17, 1882, for $14,635, that after paying the indebtedness of the Third National bank he should surrender to you whatever remained as assignee of Hooker & Co.

A. Yes, sir.

Q. You made that demand on the receiver?

756 A. Yes, sir. I desire to make an explanation. The note was entered on the books at this time under January 11th for the reason our effort was to get this through and get the earnings into the book so we could make a statement on the first day of January, and everything was hurried through. We attempted to get the note and interest figured up, including the 29th of December, and the note was dated on the 30th. The whole thing was entered up in the earnings of last year until the 11th of January, 1877. That was the only reason.

Mr. BISBEE: I notice that the first 60 tierces of ham credited on the 18th of January, 1877, brought $1,121.93, and the last 30 tierces of hams credited on the 24th of February brought $737.00. You may state, if you know, what was the cause of the difference in price.

A. Damaged condition. He claimed that the hams would be lost if they were not sold at that time. The others were a selection of them, but even then there was a better price, but these were in a damaged condition.

Q. The reason was, you say, because the 60 tierces that were first sold were not prime ham?

A. Not prime.

Q. And did not bring as much as those you sold in February?

757 A. Didn't bring the full market price; they were sold under the advice of these gentlemen at the time; they were consulted as to price and everything else; they found a purchaser.

Cross-examination resumed:

Q. You have testified as to the various sales which are acknowledged upon the note introduced in evidence. Please state whether the firm of S. G. Hooker & Co. knew or were advised of these sales.

A. Every sale was made with their knowledge and advice or by them or through them; there was nothing ever sold without their knowledge; no disposition to press it beyond what was to their advantage.

It is understood that a copy of the principal note referred to is to be made and attached to the testimony.

It is admitted by the counsel the correctness of the judgment *as* set forth in the creditor's bill, the judgment having been rendered April 17, 1882, for the sum of $14,635.35; that a *fireri facias* was issued on the 15th of July, 1882, for the sum of $14,667.81. It is

also admitted that the *fieri facias* was issued, as set forth in
758 the creditor's bill, on the 15th of July, 1882, and delivered to the marshal, and that the marshal, on the 20th of September, 1882, returned the writ with this endorsement: "By virtue of the within writ he did, on the 20th of September, 1882, demand of the defendant Ira Foote payment of the amount due thereon, or that he turn out property wherewith to satisfy the said writ; that the same was refused; that he therefore returned the writ, by order of the attorney of the plaintiff, wholly unsatisfied."

Mr. JACKSON: I offer in evidence three assignments—one by Albion Cate, made September 23, 1882, assigning a judgment obtained September 4, 1882, in the circuit court of Cook county, for $100 and costs of suit, amounting to $5.50, and that the record of the assignment set forth there was due upon the judgment obtained $114.50 at the date of the assignment.

Also assignment of judgment made by W. D. Bradford on the 20th of September, 1882, to the Third Nat. bank; judgment obtained July 11, 1882, for $200.

759 Also an assignment of judgment made by L. H. Bisbee and John P. Ahrens September 29, 1882, to the Third Nat. Bank of Chicago, said judgment having been obtained June 24, 1882, for $100 and costs of suit. All the judgments are against Ira Foote.

It is further agreed that the judgment described in the creditor's bill for $14,667.81 was based upon the guaranty of Ira Foote upon the back of the two notes dated July 1, 1876, for $5,000 each—one due July 1, 1877, and the other October 1, 1877—signed by William H. Wood, Caroline E. Couch, and James Couch, trustees of the estate of Ira Couch, deceased, and which two notes are the ones described in the principal note of S. G. Hooker & Co. to the Third National bank for $13,912.97, dated December 30, 1876.

Signature waived.

760 (*Testimony of George D. Lincoln.*)

Testimony taken before Henry W. Bishop, master in chancery, on July 31st, A. D. 1884.

Present: Mr. Jackson, for compl't; Mr. Bisbee, for def't; Mr. Thompson, for Pearce.

GEORGE D. LINCOLN, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. BISBEE, and deposes and says as follows:

Q. You are a member of the firm of S. G. Hooker & Co.?

A. Yes.

Q. Did you sign this note I have been inquiring about of Mr. Pearce?

A. I did not sign in front.

Q. Did you sign it on the back?

A. Yes.

Q. The note was a note of the firm of S. G. Hooker & Co., was it?

A. Yes.

Q. Will you state what relation you have in relation to the 90 tierces of hams that appear on the note as collateral? State what you know about it.

A. I could not tell exactly, but I know there were a great many damaged hams, and we had a great deal of trouble getting
761 rid of them. In some lots they were worse than others.

Q. Have you any recollection as to the sale of hams by Mr. Pearce, of the Third National bank?

A. He didn't sell them at all. We sold them ourselves as fast as we could find anybody to buy and turned the proceeds over to the bank.

Q. Then the bank did not sell those hams?

A No, sir; not directly.

Q. Is it your understanding the endorsement of $737 on the 24th of February, 1877, under the name of lard was the last 30 tierces of hams? Is that your understanding?

A. It is my understanding. I have no recollection of our having any lard at that time.

Q. Have you any recollection that would lead you to say that endorsement is an error and should have been 30 tierces of hams? Can you so state from your recollection?

A. From my recollection I have no doubt of it. They were a portion of the hams.

Q. The last 30 tierces of them?

A. Yes.

Q. Was there any other collaterals in the hands of the Third National bank or any other person applicable to that note than those described on the face of the note?

A. No.

Q. Was there any other money, property, or thing of value in any form, shape, name, or note ever in the hands of J. Irving Pearce or of the Third National bank or any other person applica-
762 ble to this note other than what appears on the face of the note?

A. Not to my knowledge.

Q. If there had been any would you have known it?

A. I should. I should rather think I would at that time. I might have forgotten it now.

Q. You are able to state definitely in relation to it?

A. I don't know of their having anything; not to my knowledge, certainly.

Q. You may state if you know of any money ever being collected or realized by the Third National bank or Pearce that does not appear endorsed on the back of the note; and, if so, what it is.

A. No, sir; I don't know of any such thing.

Q. Did the firm of S. G. Hooker & Co. ever pay anything on that

note or was there any securities applicable to that note other than what appears on the face or back of it?

A. I think not. I don't know of any such thing unless you include what was in the hands of Mr. Pearce as assignee.

Q. That is endorsed on the back of the note. Was there any property that went into the hands of Mr. Pearce as assignee that should have been applied on this note that you know of?

A. No, sir.

763 Q. What was transferred to him as assignee was a general transfer, was it not, for the benefit of all the creditors?

A. Yes; for the benefit of the unsecured creditors.

Q. For the benefit of such creditors as were named in the assignment?

A. Yes.

Q. Can you state all the money that was realized from the 90 tierces of hams *was* turned over to the Third National bank and endorsed on the back of that note?

A. No; I could not tell you that was the exact amount, but I suppose it was.

Q. Have you any doubt in your own mind?

A. No; I have no doubt about it at all.

Q. So far as you know, all the money that was realized was put on the back of the note?

A. Was put on the back of the note.

Signature waived.

764 *Testimony on Behalf of Complainant, before Elijah B. Sherman, a Master in Chancery, on February 19th, 1885.*

Present: Lyman & Jackson, for compl't; L. H. Bisbee, for defendant Foote; J. H. Thompson, for J. I. Pearce, & R. E. Jenkins, rec'r.

FEBRUARY 19TH, 1885.

Complainant's counsel offers in evidence the following note:

$13,912.97. CHICAGO, *Dec.* 30, 1886.

"Ninety day- after date we promise to pay the Third National Bank of Chicago, or order, at their office, $13,912.97, for value rec'd, with interest at the rate of 10 per ct. per annum, we having deposited with them, as collateral security for the payment thereof, 1 note of even date for $3,000, secured by mtg. on elevator at Grinnell, Ia.; 6 notes signed by Alberger, 2 notes signed by F. Bishop, 2 notes signed by Vinden, ninety trc. of hams, 2 notes signed by Couch-estate trustees.

"S. G. HOOKER & CO.,
"*In Settlement of Old Firm Acc't.*

"Small note and mortgage delivered up 2-28."

(On the back of which note appears the following endorsements:)

"July 9, 1877, $130.50 paid as interest on this note (Alberger note).

We guarantee the collection of this note.

G. D. LINCOLN.
S. G. HOOKER.

765 $1,121, paid January 18, '77, proceeds of 60 tierces hams.
$1,024.83, 2–8, Bishop.
$1.024.83, 2–23, "
$86.33, " Alberger int.
$737, 2–24, lard.
$3,224.86 2–28, Grinnell.
126.53, 9–8, Alberger.
1,721.16, 5–13–'78, Vinden's note.
1,570.45, 5–12–'79, 30 per ct. dividend paid by certificates of deposit."

H. W. Jackson, complainant's solicitor, makes the following statement:

That the three assignments of judgments offered by Mr. Jackson heretofore in this case for small amounts have been paid to the receiver of the Third National bank.

Nothing has been collected by the receiver of the Third National bank on the Alberger notes since the former testimony was taken in this cause.

Nothing has been collected upon the Alberger notes in the hands of Park & Becker, attorneys, at Buffalo, at any time since he has been receiver of the bank, and that he has not collected upon the note of S. G. Hooker & Company anything except the dividend paid by Mr. Pierce of $1,570.45 on May 12th, 1879, and also on the Vinden note $172.16 on May 13, 1878; that as receiver of the Third
766 National bank he holds these several notes as collateral security for the payment of the notes sued on, and that the notes are considered worthless.

Defendants' solicitors request the master to compute the interest on the note in question since the rendition of the judgment April 17, 1882, at both 10 and 6 per cent. interest.

Counsel for the defendant Pierce requests the master to make a special finding as to the circumstances under which the payment of May 12, 1879, was made, said payment having been made under protest, Mr. Pierce claiming that it was not a proper dividend to be paid by him. Counsel for Mr. Pierce therefore asks the master to compute the interest at both 6 and 10 per cent., both with and without the dividend.

767 This indenture, made this 28th day of February, 1877, between Stephen G. Hooker and George D. Lincoln, copartners under the name, firm, and style of S. G. Hooker & Co., of the city of Chicago, in the county of Cook and State of Illinois, parties of first part, and J. Irving Pearce, of the same place, party of the second part:

Whereas the said copartnership is justly indebted in sundry considerable sums of money and has become unable to pay and discharge the same with punctuality or in full, and the said parties of

the first part are now desirous of making a fair and equitable distribution of all their property and effects among their creditors:

Now, therefore, this indenture witnesseth: That the said parties of the first part, in consideration of the premises and of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, assigned, transferred, and set over, and by these presents do grant, bargain and sell, release, assign, transfer, and set over, unto the said party of the second part and to his heirs and assigns forever all and singular the lands, tenements, hereditaments, and all the goods, chattels, merchandise, bills, bonds,
768 notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, and property of every name and nature whatever of the said parties of the first part:

To have and to hold the same and every part and parcel thereof, with the appurtenances, to the said party of the second part, his heirs, executors, administrators, and assigns—

In trust, nevertheless, to and for the following uses, interests, and purposes—that is to say: That the said party of the second part shall forthwith take possession of all and singular the lands, tenements, hereditaments, property, and effects hereby assigned, and sell and dispose of the same for the best price which he shall be able to obtain, and to convert the same into money, and shall also collect all and singular said debts, due bills, bonds, notes, amounts, claims, demands, and choses in action, or so much thereof as may prove collectable, and thereupon execute, acknowledge, and deliver all necessary conveyances and instruments for the purpose aforesaid, and by and with the proceeds of such sales and collections the said party of the second part shall first pay and disburse all the lawful expenses, costs, charges, and commissions of executing and carrying into effect this assignment, and by and with the residue or net proceeds
769 and avails of such sales and collections the said party of the second part shall, if the residue of such proceeds is sufficient for that purpose, pay all the copartnership debts and liabilities now due and to become due from the said parties of the first part, and which are particularly described and mentioned in the schedule annexed marked Schedule B, together with all interest money due and to become due thereon, and if the residue of the said proceeds shall not be sufficient to pay the said debts and liabilities and interest money in full, then to apply the same, so far as they will extend, to the payment of the said debts and liabilities and interest moneys proportionately to their respective amounts.

II.

By and with the residue and remainder of said net proceeds and avails, if any there shall be, the party of the second part shall pay the same over to the said parties of the first part, share and share alike.

And for the better execution of these presents and of the several trusts hereby reposed, the said parties of the first part do hereby make, nominate, and appoint the said party of the second part the

true and lawful attorney, irrevocably, of them & each of
770 them, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which can or may be necessary in the premises as full and completely as the said parties of the first part or either of them might or could do were these *presence* not executed, and attorneys, one or more, under him to make, nominate, and appoint, with full power of substitution or revocation, hereby ratifying and confirming all and everything that our said attorney or his attorney shall do or cause to be done in the premises; and the party of the second part hereby accepts the trusts created by these presents and covenants that he will faithfully perform the same.

In witness whereof the respective parties hereto have hereunto set their hands and seals the day and year first above written.

(Signed) S. G. HOOKER. [L. S.]
GEO. D. LINCOLN. [L. S.]
J. IRVING PEARCE. [L. S.]

(Endorsed:) Filed the 25th day of Feb'y, 1885. Wm. H. Bradley, clerk.

771 *Assignment.*

For value received I hereby sell, assign, transfer, and set over unto James H. Rice, of Chicago, Illinois, all my right, title, interest, claim, and demand in and under two (2) certain notes executed by the trustees of Ira Couch's estate to my order, each of said notes being for the sum of five thousand dollars ($5,000), and are dated the first day of July, 1876, and are now in the hands of Huntington W. Jackson, receiver of the Third National bank of Chicago; said notes being held by said Jackson, receiver as aforesaid, as collateral security for a certain indebtedness due said Third National bank from S. G. Hooker & Co.

I hereby give said Rice full power and authority to prosecute, in my name or his own, any and all suits touching said notes in any manner that he may deem best.

Witness my hand and seal, at Chicago, this 16th day of February, 1885. IRA FOOTE.

772 United States Circuit Court, Northern District of Illinois.

MONDAY, *March 27th*, 1882.

Present: Hon. Henry W. Blodgett, district judge.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE. } Assumpsit.

Now come the parties, by their attorneys, and upon issue joined herein, by agreement of the parties, as per stipulation filed, they waive the intervention of a jury and for trial put themselves upon the court; and, after hearing a part of the evidence, the hour of adjournment having arrived, it is ordered that the further trial of the cause be postponed until to-morrow morning.

773 United States Circuit Court, Northern District of Illinois.

TUESDAY, *March 28th*, 1882.

Present: Hon. Henry W. Blodgett, district judge.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE. } Assumpsit.

Now come again the parties, by their attorneys, and, after hearing the concluding evidence and the arguments of counsel upon the issue herein, the court takes the same under advisement.

774 United States Circuit Court, Northern District of Illinois.

MONDAY, *April 17th*, 1882.

Present: Hon. Henry W. Blodgett, district judge.

THE THIRD NATIONAL BANK OF CHICAGO
vs.
IRA FOOTE. } Assumpsit.

Now come the parties, by their attorneys, and the court, having considered and now being fully advised upon the matters heretofore submitted herein, finds the issue for the plaintiff and assesses its damages at fourteen thousand six hundred and thirty-five dollars and fifty-five cents; to which finding of the court the defendant, by his attorney, excepts and moves the court for a new trial herein; and the court, being now fully advised upon said motion for a new trial, overrules the same; to which ruling of the court in overruling said motion the defendant, by his attorney, excepts; and, on motion of the plaintiff's attorney for judgment herein, it is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of fourteen thousand six hundred and thirty-five dollars and fifty-five cents, its damages so as aforesaid assessed, together with its costs and charges in
775 this behalf expended, amounting to —— dollars and —— cents, and that it have execution therefor.

And, on motion, leave is given to withdraw the notes by leaving certified copies of the same on file.

776 COMPLAINANT'S EXHIBIT "O," Being Copy of Entries in Option Book of S. G. Hooker and Co.

777 Bo't of

5,000 No. 2 wheat, seller Nov. 87½
ac. Ira Foot.
[In red ink:] Ac. Nov. 7.

Bo't of

5,000 No. 2 wheat, seller Nov. 87½
ac. Ira Foot.
[In red ink:] Ac. Nov. 7.

Bo't of
5,000 No. 2 wheat, seller Nov. ---------- 87¾
ac. Ira Foot.
[In red ink:] Ac. Nov. 7

Bo't of
5,000 No. 2 wheat, seller Dec. ---------- 85⅜
ac. Ira Foot.
[In red ink:] Ac. Dec. 3.

Bo't of
5,000 No. 2 wheat, seller Dec. ---------- 57⅞
ac. Ira Foot.
[In red ink:] Ac. Dec. 3.

Bo't of
5,000 No. 2 wheat, seller Dec. ---------- 86¾
ac. Ira Foot.
[In red ink:] Ac. Dec. 3.

Bo't of
5,000 No. 2 oats, seller Dec. ---------- 47
ac. Ira Foot.
[In red ink:] Ac. Jan. 2.

Bo't of
5,000 No. 2 oats, seller Dec. ---------- 47
ac. Ira Foot.
[In red ink:] Ac. Jan. 2.

Bo't of
5,000 No. 2 oats, seller Dec. ---------- 47
ac. Ira Foot.
[In red ink:] Ac. Jan. 2.

778 Sold
5,000 No. 2 wheat, seller Nov. ---------- 84½
ac. Ira Foot.
[In red ink:] Ac. Nov. 7.

Sold
5,000 No. 2 wheat, seller Nov. ---------- 85
ac. Ira Foot.
[In red ink:] Ac. Nov. 7.

Sold
5,000 No. 2 wheat, seller Nov. ---------- 85⅞
ac. Ira Foot.
[In red ink:] Ac. Nov. 7.

Sold
5,000 No. 2 wheat, seller Dec. ---------- 93
ac. Ira Foot.
[In red ink:] Ac. Dec. 3.

Sold
5,000 No. 2 wheat, seller Dec. ---------- 92¾
ac. Ira Foot.
[In red ink:] Ac. Dec. 3.

Sold
5,000 No. 2 wheat at seller Dec. ---------- 92¾
ac. Ira Foot.
[In red ink:] Ac. Dec. 3.

Sold
5,000 No. 2 oats, seller Dec. ---------- 54¼
[In red ink:] Ac. Jan. 2.

Sold
5,000 No. 2 oats, seller Dec. ---------- 54⅜
ac. Ira Foot.
[In red ink:] Ac. Jan. 2.

Sold
5,000 No. 2 oats, seller Dec. ---------- 54
[In red ink:] Ac. Jan. 2.

779 Bought.

1875.
March 25. Bo't of P. P. Oldershaw
No. 218. 250 tcs. P. S. lard, seller June, @ ---------- 14 25
Contract. Ac. Ira Foot.
[Written across the side in red ink:] Settled April 5. No. 210. Ac. April 19th.
Ap'l 2 he put up $500. N.

April 21st transferred. Bo't of W. & J. Rogan
No. 231. 500 tcs. P. S. lard, seller June, @ ---------- 15 60
ac. Ira Foot.
[Written across the side in red ink:] 250. Settled May 11. No. 229. 250. Settled May 21. No. 248. Ac. June 1st.
H.

April 28. Bo't of Joseph Jones
No. 241. 250 tcs. P. S. lard, seller June, @ ---------- 15 82½
ac. Ira Foot.
[Written across the side in red ink:] Settled June 1. Cash. Ac. June 1st. H.

April 30. Bo't of J. S. Perronnet & Co.
No. 242. 250 tcs. P. S. lard, seller June, @ ---------- 15 72½
ac. Ira Foot.
[Written across the side in red ink:] Settled June 2. Cash. Ac. June 7th.
Margin to 14.22½. H.

1876.
Jan. 22. Bo't of C. P. & P. Co.
No. 331. 250 tcs. P. S. lard, seller March, @ ---------- 12 20
Contract. Ac. Ira Foot.

[Written across the side in red ink:] Settled Feb'y 12. No. 342. Ac. Feb. 14.

HOOKER.

1874.
Dec. 14. Bo't of Nichols & Helmer
No. 508. 5,000 No. 2 wheat, seller Feb., @ ---------- 89⅞
ac. Ira Foot.

[Written across the side in red ink:] Settled Dec. 29. No. 512 Ac. Jan. 18th.

N.

Dec. 15. Bo't of D. C. Scranton
509. 5,000 No. 2 wheat, seller Feb., @ ---------- 89½
ac. Ira Foot.

[Written across the side in red ink:] Settled Dec. 28. No. 509. Ac. Jan. 18th.

N.

Dec. 17. Bo't of Spruance, Preston & Co.
512. 5,000 No. 2 wheat, seller Feb., @ ---------- 88⅞
ac. Ira Foot.

[Written across the side in red ink;] Settled Jan. 30. No. 543. Ac. Feb. 1st.

N.

1875. Nichols & Helmer, same price,
Jan. 7. Bo't of *W. W. Boynton.
No. 541. 5,000 No. 2 wheat, seller Feb., @ ---------- 89¾
ac. Ira Foot.

[Written across the side in red ink:] Settled Feb. 1st. Cash. Ac. Feb. 1st.

N.

Jan. 11. Bo't of S. B. Webber
No. 542. 5,000 No. 2 wheat, seller March, @ ---------- 89¾
ac. Ira Foot.

[Written across the side in red ink:] Settled Feb. 27. No. 542. Ac. March 1st.

N.

Jan. 30. Bo't of Geo. Craig
No. 563. 5,000 No. 2 wheat, seller April, @ ---------- 90½
ac. Ira Foot.

[Written across the side in red ink:] Settled by note. Ac. April 2nd.

N.

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*Erased in copy.

780 Sold.

1875. I. N. Maynard.
March 29. Sold W. & J. Rogan
No. 218. 250 tcs. P. S. lard, seller June, @ ---------- 14 55
ac. Ira Foot. Contract.

[Written across the side in red ink:] Settled April 10. No. 226. Ac. April 19th.

N.

May 28. Sold W. & J. Rogan
No. 231. 500 tcs. P. S. lard, seller June, @ ---------- 14 00
ac. Ira Foot.

[Written across the side in red ink:] Settled May 31. No. 235. Ac. June 1st.

H.

May 29. Sold Armour & Co.
No. 241. 250 tcs. P. S. lard, seller June, @ ---------- 14 30
ac. Ira Foot.

[Written across the side in red ink:] Settled May 31. No. 243. Ac. June 1st.

N.

June 3. Sold W. & J. Rogan
No. 242. 250 lard, cash, cash ---------- 13 75
ac. Ira Foot.

[Written across the side in red ink:] Settled June 4. Ac. June 7th.

N.

1876.
Feb. 5. Sold W. Butcher & Sons
No. 331. 250 tcs. P. S. lard, seller March ---------- 12 50
ac. Ira Foot.

[Written across the side in red ink:] Settled Feb. 7. No. 334. Ac. Feb. 14th.

N.

1874.
Dec. 22. Sold D. C. Scranton
No. 508. 5,000 No. 2 wheat, seller Feb., @ ---------- 92
ac. Ira Foot.

[Written across the side in red ink:] Settled Dec. 23. No. 506. Ac. Jan. 18th.

N.

Dec. 28. Sold D. C. Scranton
509. 5,000 No. 2 wheat, seller Feb., @ ---------- 91¾
ac. Ira Foot.

[Written across the side in red ink:] Settled Dec. 28. No. 509. Ac. Jan. 18th.

N.

Dec. 28. Sold Nichols & Helmer
512. 5,000 No. 2 wheat, seller Feb., @ ---------- 91¾
ac. Ira Foot.

[Written across the side in red ink:] Settled Dec. 28. No. 508. Ac. Feb. 1st.

N.

1875.
Jan. 30. Sold Geo. Craig
No. 541. 5,000 No. 2 wheat, seller Feb., @ ---------- 88¼
ac. Ira Foot.

[Written across the side in red ink:] Settled Feb. 1st. Cash. Ac. Feb. 1st.

N.

Feb. 25. Sold W. E. McHenry
No. 542. 5,000 No. — wheat, seller March, @ ---------- 84½
ac. Ira Foot.

[Written across the side in red ink:] Settled Feb. 27. No. 542. Ac. March 1st.

G.

March —.
No. 563. Reported sold to Foot ---------- 93¾

[Written across the side in red ink:] Settled by note. Ac. April 2nd.

781 Bought.

1875.
Feb. 1st. Bo't of Lyon, Luster & Co.
No. 567. 5,000 No. 2 wheat, seller April, @ ---------- 90
ac. Ira Foot.

[Written across the side in red ink:] Settled March 17. No. 567. Ac. April 1st.

G.

Feb. 4. Bo't of P. S. Miller
No. 570. 5,000 No. 2 wheat, seller April, @ ---------- 88⅞
ac. Ira Foot.

[Written across the side in red ink:] Settled Feb. 18. Morse, Wood & Co. Ac. April 1st.

G. & N.

Feb. 5. Bo't of A. R. Heald
No. 571. 5,000 — 2 wheat, seller April, @ ---------- 88⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled Feb. 5. No. 565. Ac. April 1st.

G.

Feb. 6. Bo't of H. J. Slater
No. 576. 5,000 No. 2 wheat, seller May, @ ---------- 91⅞
ac. Ira Foot. Contract.
$700 margin.

[Written across the side in red ink:] Settled April 20. No. 619. Ac. April 22nd.

G.

Feb. 8. Bo't of C. T. Wheeler & Co.
No. 577. 5,000 No. 2 wheat, seller May, @ ---------- 91⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled March 20. No. 594. Ac. April 22nd.

March 20. Bo't of Gilbert & Brega
No. 595. 5,000 No. 2 corn, seller May, @ ---------- 72½
ac. Ira Foot.

[Written across the side in red ink:] Settled March 24. No. 595. Ac. May 3rd.

G.

March 20. Bo't of Wolcott & Goodnow
No. 596. 5,000 No. 2 corn, seller May, @ ---------- 72⅝
ac. Ira Foot.
$300 margin.

[Written across the side in red ink:] Settled May 1st. Cash. Ac. May 3rd.

G.

March 20. Bo't of W. P. McLaren & Co.
No. 597. 5,000 No. 2 wheat, seller April, @ ---------- 95
ac. Ira Foot.

[Written across the side in red ink:] Settled M'ch 22. No. 566. Ac. April 1st.

G.

March 22. Bo't of Isaac Myers
No. 598. 5,000 No. 2 wheat, seller April, @ ---------- 94
ac. Ira Foot.

[Written across the side in red ink:] Settled M'ch 26. No. 561. Ac. April 1st.

G.

March 22. Bo't of W. Northup & Co.
No. 600. 5,000 No. 2 wheat, seller April, @ ---------- 93
ac. Ira Foot.

[Written across the side in red ink:] Settled M'ch 23. No. 584. Ac. April 1st.

G.

He pays to market 79.

March 27. Bo't of D. R. Brearley
No. 607. 5,000 No. 2 corn, seller May, @ ---------- 75⅝
ac. Ira Foot. Contract, 79c.

[Written across the side in red ink:] Settled Ap'l 27. No. 653. Ac. May 3rd.

G.

782 Sold.

March 16. Sold Cooley, Dwight & G.
No. 567. 5,000 No. 2 wheat, seller April, @ ---------- 94¾
ac. Ira Foot.

[Written across the side in red ink:] Settled M'ch 17. No. 567. Ac. April 1st.

G.

March 16. Sold Cooley, Dwight & G.
No. 570. 5,000 No. 2 wheat, seller April, @ ---------- 94¾
ac. Ira Foot.

[Written across the side in red ink:] Settled M'ch 16. No. 591. Ac. April 1st.

G.

March 16. Sold F. Camblas
No. 571. 5,000 No. 2 wheat, seller April, @ ---------- 94½
ac. Ira Foot.

[Written across the side in red ink:] Settled M'ch 18. No. 585. Ac. April 1st.

G.

April 6. Sold Lyon, Luster & Co.
No. 576. 5,000 No. 2 wheat, seller May, @ ---------- 1 02⅞
ac. Ira Foot.

[Written across the side in red ink:] Settled Ap'l 7. No. 615. Ac. April 22nd.

G.

April 6. Sold Lyon, Lester & Co.
No. 577. 5,000 No. 2 wheat, seller May, @ ---------- 1 03
ac. Ira Foot.

[Written across the side in red ink:] Settled April 7. No. 619. Ac. April 22nd.

G.

March 24. Sold Gilbert & Brega
No. 595. 5,000 No. 2 corn, seller May, @ ---------- 76½
ac. Ira Foot.

[Written across the side in red ink:] Settled M'ch 24. No. 595. Ac. May 3rd.

G.

March 24. Sold D. R. Brearley
No. 596. 5,000 No. 2 corn, seller May, @ ---------- 76½
ac. Ira Foot.

[Written across the side in red ink:] Settled M'ch 24. No. 575. Ac. May 3rd.

G.

April 1st. Sold Wm. Young & Co.
No. 597. 5,000 No. 2 wheat, seller April, @ ---------- 94⅝
ac. Ira Foot.

[Written across the side in red ink:] Settled April 1st. Cash. Ac. April 1st.

G.

April 1st. Sold Wm. Young & Co.
No. 598. 5,000 No. 2 wheat, seller April, @ ---------- 94⅝
ac. Ira Foot.

[Written across the side in red ink:] Settled Ap'l 1st. Cash. Ac. April 1st.

G.

March 31. Sold M. C. Baker
No. 600. 5,000 No. 2 wheat, seller April, @ ---------- 93⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled Ap'l 1st. Cash. Ac. April 1st.

G.

April 21. Sold D. W. Irwin & Co.
No. 607. 5,000 No. 2 corn, seller May, @ ---------- 75½
ac. Ira Foot.

[Written across the side in red ink:] Settled Ap'l 29. No. 580. Ac. May 3rd.

G.

783 Bought.

1875.

March 29. Bought of Murry, Nelson & Co.
No. 608. 5,000 No. 2 corn, seller May, @ ---------- 75¾
ac. Ira Foot.

[Written across the side in red ink:] Settled May 1st. Cash. Ac. May 3rd.

G.

March 30. Bo't of Geo. Gale
No. 611. 5,000 No. 2 corn, seller May, @ ---------- 75¼
ac. Ira Foot.

[Written across the side in red ink:] Settled May 1. Cash. Ac. May 3rd.

G.

March 31. Bo't of M. C. Baker
No. 612. 5,000 No. 2 wheat, seller May, @ ---------- 98⅛
ac. Ira Foot.

[Written across the side in red ink:] Settled Ap'l 7. No. 599. Ac. May 3rd.

G.

April 1st. Bo't of Wm. Young & Co.
No. 613. 5,000 No. 2 wheat, seller May, @ ---------- 99c.
ac. Ira Foot.
$400 margin.

[Written across the side in red ink:] Settled May 1. Cash. Ac. May 3rd.

G.

April 1st. Bo't of Wm. Young & Co.
No. 614. 5,000 No. 2 wheat, seller May ---------- 99c.
ac. Ira Foot.
$400 margin.

[Written across the side in red ink:] Settled Ap'l 4. No. 628. Ac. May 3rd.

G.

April 7. Bo't of Lyon, Lester & Co.
No. 619. 5,000 No. 2 wheat, seller May, @ ---------- 1 03⅞
ac. Ira Foot, ac. Hooker.

[Written across the side in red ink:] Settled Ap'l 7. No. 577. Ac. April 24th.

G.

April 10. Bo't of G. P. Comstock & Co.
No. 630. 5,000 No. 2 corn, seller May, @ ---------- 78⅝
ac. Ira Foot.

[Written across the side in red ink:] Settled Ap'l 29. No. 630. Ac. May 3rd.

G.

April 10. Bo't of G. P. Comstock & Co.
No. 631. 5,000 No. 2 corn, seller May, @ ---------- 78¾
ac. Ira Foot.

[Written across the side in red ink:] Settled Ap'l 29. No. 642. Ac. June 1st.

G.

April 10. Bo't of G. P. Comstock & Co.
No. 632. 5,000 No. 2 corn, seller May, @ ---------- 78¾
ac. Ira Foot.

[Written across the side in red ink:] Settled May 1. Cash. Ac. June 1st.

G.

April 12. Bo't of Nichols & Helmer
No. 633. 5,000 No. 2 corn, seller May, @ ---------- Foot, 79c.
ac. Ira Foot.
Ap'l 19 we put up $600.00.

[Written across the side in red ink:] Settled Ap'l 3. No. 608. Ac. June 1st.

G.

April 12. Bo't of Cooley D. & Gillette
No. 634. 5,000 No. 2 corn, seller May ---------- Foot, 78⅞
ac. Ira Foot.

[Written across the side in red ink:] Settled Ap'l 20. No. 551. Ac. June 1st.

G.

784 Sold.

1875.

April 28. Sold D. W. Irwin & Co.
No. 608. 5,000 No. 2 corn, seller May, @ ---------- 75½
ac. Ira Foot.

[Written across the side in red ink:] Settled April 30. No. 663. Ac. May 3rd.

G.

G. P. Comstock & Co.

April 29. Sold * Bryant
No. 611. 5,000 No. 2 corn, seller May, @ ---------- 76⅝
ac. Ira Foot.

[Written across the side in red ink:] Settled April 29. No. 573. Ac. May 3rd.

N.

April 8. Sold C. Gerstenberg
No. 612. 5,000 No. 2 wheat, seller May, @ ---------- 1 07¾
ac. Ira Foot. Contract.

[Written across the side in red ink:] Settled Ap'l 22. No. 655. Ac. May 3rd.

G.

April 8. Sold T. H. Seymour & Co.
No. 613. 5,000 No. 2 wheat, seller May, @ ---------- 1 07⅞
ac. Ira Foot.

[Written across the side in red ink:] Settled Ap'l 16. No. 626. Ac. May 3rd.

G.

April 8. Sold D. & M.
No. 614. 5,000 No. 2 wheat, seller May, @ ---------- 1 08¼
ac. Ira Foot.

[Written across the side in red ink:] Settled Ap'l 8. No. 628. Ac. May 3rd.

G.

April 13. Sold Henry Town
No. 619. 5,000 No. 2 wheat, seller May, @ ---------- 1 05⅜
ac. Ira Foot, for Hooker.

[Written across the side in red ink:] Settled Ap'l 20. No. 576. Ac. April 24th.

G.

G. P. Comstock & Co.

April 29. Sold * Bryant
No. 630. 5,000 No. 2 corn, seller May, @ ---------- 76⅝
ac. Ira Foot.

[Written across the side in red ink:] Settled April 29. No. 630. Ac. May 3rd.

N.

May 24. Sold Henry Town
No. 631. 5,000 No. 2 corn, cash May 1, seller June, @ --- 67c.
ac. Ira Foot.

[Written across the side in red ink:] Settled May 25. No. 705. Ac. June 1st.

G.

May 24. Sold Dugan, Case & Spears
No. 632. 5,000 No. 2 corn, cash May 1st, seller June, @-- 66⅞
ac. Ira Foot.

---

* Erased in copy.

[Written across the side in red ink:] Settled May 25. No. 702. Ac. June 1st.

G.

May 24. Sold Duncan
No. 633. 5,000 No. 2 corn, cash May 1st, seller June ac. Ira Foot. 66⅞

[Written across the side in red ink:] Settled May 24. No. 671. Ac. June 1st.

G.

May 24. Sold Trego & Smith
No. 634. 5,000 No. 2 corn, cash May 1st, seller June ac. Ira Foot. 64¼

[Written across the side in red ink:] Settled June 1. Cash. Ac. June 1st.

G.

[On margin in pencil:] Bo't for May, received & paid for May 1, '75, and sold for June May 24th. Cash corn.

785 Bought.

1875.

April 12. Bo't of S. B. Webber
No. 635. 5,000 No. 2 corn, seller May, @ ac. Ira Foot. 78¾

[In red ink:] Ac. June 1st.

G.

April 12. Bo't of G. P. Comstock & Co.
No. 636. 5,000 No. 2 corn, seller May, @ ac. Ira Foot. 78⅞

[In red ink:] Ac. June 1st.

G.

April 14. Bo't of J. S. Peironnet & Co.
No. 641. 5,000 No. 2 wheat, seller June, @ ac. Ira Foot. 1 04¾

[In red ink:] Ac. May 31st.

G.

April 14. Bo't of G. W. Adams & Co.
No. 642. 5,000 No. 2 corn, seller May, @ ac. Ira Foot. 76⅛

[In red ink:] Ac. May 3rd.

G.

April 19. Bo't of A. Poole
No. 656. 5,000 No. 2 wheat, seller June, @ ac. Ira Foot. 1 04⅜

[In red ink:] Ac. May 31st.

G.

April 19. Bo't of Gilbert & Brega
No. 657. 5,000 No. 2 corn, seller June, @ ac. Ira Foot. 74c.

[In red ink:] Ac. May 31st.

G.

April 20. Bo't of McCormick, Adams & Co.
No. 660. 5,000 No. 2 wheat, seller June, @ ---------- 1 02⅝
ac. Ira Foot.

[In red ink:] Ac. May 31st.

G.

April 28. Bo't of D. W. Irwin & Co.
No. 663. 5,000 No. 2 corn, seller June, @ ---------- 76½
ac. Ira Foot.

[In red ink:] Ac. May 31st.

G.

April 28. Bo't of D. W. Irwin & Co.
No. 671. 5,000 No. 2 corn, seller June, @ ---------- 76½
ac. Ira Foot.
Margin 250.

[In red ink:] Ac. May 31st.

G.

April 28. Bo't of Henry Town
No. 672. 5,000 No. 2 wheat, seller June ---------- 1 06
ac. Ira Foot, ac. Hooker, ac. Nellie.

[In red ink:] Ac. Sept. 21st. C'k to Mrs. H.

April 29. Bo't of Bryant, G. P. Comstock & Co.
No. 673. 5,000 No. 2 corn, seller June, @ ---------- 77½
ac. Ira Foot.

[In red ink:] Ac. May 31st.

N.

786 Sold.

1875.

May 24. Sold Trego & Smith
No. 635. 5,000 No. 2 corn, cash May -st, seller June, @ -- 64½
ac. Ira Foot.

[Written across the side in red ink:] Settled June 1. Cash. Ac. June 1st.

G.

May 24. Sold T. T. Gurney, Lyon, Lester & Co.
No. 636. 5,000 No. 2 corn, cash May 1st, seller June, @ -- 64½
ac. Ira Foot.

[Written across the side in red ink:] Settled June 1. Cash. Ac. June 1st.

G.

May 27. Sold J. B. Hobbs & Co.
No. 641. 5,000 No. 2 wheat, seller June, @ ---------- 95⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled May 28. No. 731. Ac. May 31st.

G.

G. P. Comstock & Co.

April 29. Sold *Bryant
No. 642. 5,000 No. 2 corn, seller May, @ ---------- 76⅝
ac. Ira Foot.

[Written across the side in red ink:] Settled Ap'l 29. No. 631. Ac. May 3rd.

G.

May 28. Sold B. Adams
656. 5,000 No. 2 wheat, seller June, @ ---------- 92¾
ac. Ira Foot.

[Written across the side in red ink:] Settled June 1st. Cash. Ac. May 31st.

G.

May 20. Sold Gilbert & Brega
No. 657. 5,000 No. 2 corn, seller June, @ ---------- 68⅝
ac. Ira Foot.

[Written across the side in red ink:] Settled May 20. No. 657. Ac. May 31st.

N.

May 29. Sold Rob't Warren
No. 660. 5,000 No. 2 wheat, seller June, @ ---------- 90¼
ac. Ira Foot.

[Written across the side in red ink:] Settled June 1. Cash. Ac. May 31st.

G.

May 20. Sold R. A. Peters
No. 663. 5,000 No. 2 corn, seller June, @ ---------- 69
ac. Ira Foot.

Called him 2.50.

[Written across the side in red ink:] Settled June 1st. Cash. Ac. May 31st.

G.

May 20. Sold Murry, Nelson & Co.
No. 671. 5,000 No. 2 corn, seller June, @ ---------- 69
ac. Ira Foot.

[Written across the side in red ink:] Settled June 1st. Cash. Ac. May 31st.

N.

April 30. Sold F. P. Erskine
No. 672. 5,000 No. 2 wheat, seller June, @ ---------- 1 09
ac. Ira Foot, ac. Hooker.

[Written across the side in red ink:] Settled May 1st. No. 685. Ac. Sept. 21. Ch'k to Mrs. H.

May 20. Sold Murry, Nelson & Co.
No. 673. 5,000 No. 2 corn, seller June, @ ---------- 69
ac. Ira Foot.

* Erased in copy.

[Written across the side in red ink:] Settled June 1. Cash. Ac. May 31st.

N.

787 Bought.

1875.

April 29. Bo't of Bryant, G. P. Comstock & Co.
No. 674. 5,000 No. 2 corn, seller June, @ ---------- 77½
ac. Ira Foot.

[Written across the side in red ink:] Settled May 9. No. 556. Ac. May 31st.

N.

April 29. Bo't of Bryant, G. P. Comstock & Co.
No. 699. 5,000 No. 2 corn, seller June, @ ---------- 77½
ac. Ira Foot.

[Written across the side in red ink:] Settled May 19. No. 554. Ac. May 31st.

N.

May 3. Bo't of Norton, Son & Co.
No. 706. 5,000 No. 2 wheat, seller June, @ ---------- 1 07¼
ac. Ira Foot, Hooker. Contract.

[Written across the side in red ink:] Settled May 22. No. 715. Ac. May 31st.

G.

July —. Bo't — D. & M.
corn
No. 804. 5,000 No. 2 *wheat, seller Sept., @ ---------- 76⅝
ac. Ira Foot.

[Written across the side in red ink:] Settled July. No. 803. Ac. Sept. 8th.

G.

Sept. 6. Bo't of W. H. Underwood & Son.
No. 834. 5,000 No. 2 corn, seller Oct., @ ---------- 60½
ac. Ira Foot.

[Written across the side in red ink:] Settled Sept. 7. No. 836. Ac. Sept. 8th.

N.

Sept. 6. Bo't of J. S. Peironnet & Co.
835. 5,000 No. 2 corn, seller Oct., @ ---------- 60½
ac. Ira Foot.

[Written across the side in red ink:] Settled Sept. 6. No. 841. Ac. Sept. 8th.

N.

Sept. 6. Bo't of Bensley & Wagner
844. 5,000 No. 2 corn, seller Oct., @ ---------- 60½
ac. Ira Foot.

---

* Erased in copy.

[Written across the side in red ink :] Settled Sept. 7. No. 844. Ac. Sept. 8th.

N.

Sept. 10. Bo't of Underwood & Son
No. 854. 5,000 No. 2 corn, seller Oct., @ ---------- 58⅛
ac. Ira Foot.

[Written across the side in red ink :] Settled Sept. 15. No. 853. Ac. Sept. 20th.

G.

Sept. 10. Bo't of Bensley & Wagner
No. 855. 5,000 No. 2 corn, seller Oct., @ ---------- 58½
ac. Ira Foot.

[Written across the side in red ink :] Settled Sept. 11. No. 845. Ac. Sept. 20th.

G.

Sept. 10. Bo't of R. P. Murphey & Co.
No. 856. 5,000 No. 2 corn, seller Oct., @ ---------- 58⅝
ac. Ira Foot.

[Written across the side in red ink :] Settled Sept. 15. No. 858. Ac. Oct. 29th.

G.

Sept. 10. Bo't of J. S. Peironnet & Co.
No. 857. 5,000 No. 2 corn, seller Oct., @ ---------- 59⅝
ac. Ira Foot.

[Written across the side in red ink :] Settled Sept. 11. No. 854. Ac. Oct. 29th.

G.

788 Sold.

1875.

May 20. Sold Murry, Nelson & Co.
No. 674. 5,000 No. 2 corn, seller June, @ ---------- 69
ac. Ira Foot.

[Written across the side in red ink :] Settled June 1st. Cash. Ac. May 31st.

N.

May 20 Sold Murry, Nelson & Co.
No. 699. 5,000 No. 2 corn, seller June, @ ---------- 69
ac. Ira Foot.

[Written across the side in red ink :] Settled June 1st. Cash. Ac. May 31st.

N.

May 29. Sold R. P. Murphy & Co.
No. 706. 5,000 No. 2 wheat, seller June, @ ---------- 90¼
ac. Ira Foot.

[Written across the side in red ink :] Settled May 31. No. 697. Ac. May 31st.

G.

Sept. 1. Sold Gilbert & Brega
No. 804. 5,000 No. 2 corn, seller Sept., @ ---------- 63
ac. Ira Foot.

[Written across the side in red ink :] Settled Sept. 1. No. 803. Ac. Sept. 8th.

G.

August 28. Sold W. T. Templeton
No. 834. 5,000 No. 2 corn, seller Oct., @ ---------- 65¾
ac. Ira Foot.

[Written across the side in red ink :] Settled Aug. 28. No. 803. Ac. Sept. 8th.

G.

August 28. Sold J. S. Peironnet & Co.
No. 835. 5,000 No. 2 corn, seller Oct., @ ---------- 65¾
ac. Ira Foot.

[Written across the side in red ink :] Settled Sept. 1. No. 839. Ac. Sept. 8th.

G.

Aug. 31. Sold B. P. Hutchinson & Co.
No. 844. 5,000 No. 2 corn, seller Oct., @ ---------- 63
ac. Ira Foot.

[Written across the side in red ink :] Settled Sept. 7. No. 844. Ac. Sept. 8th.

G.

Sept. 9. Sold G. T. Beebe & Co.'
No. 854. 5,000 No. 2 corn, seller Oct., @ ---------- 56¾
ac. Ira Foot.

[Written across the side in red ink :] Settled Sept. 11. No. 857. Ac. Sept. 20th.

H.

Sept. 9. Sold Murry, Nelson & Co.
No. 855. 5,000 No. 2 corn, seller Oct., @ ---------- 56⅞
ac. Ira Foot.

[Written across the side in red ink :] Settled Sept. 20. No. 858. Ac. Sept. 20th.

H.

Oct. 29. Sold Geo. Webster
No. 856. 5,000 No. 2, cash, corn, cash ---------- 52¾
ac. Ira Foot.

[Written across the side in red ink :] Settled Oct. 29. Cash. Ac. Oct. 29th.

G.

Oct. 29. Sold Wilkins, Whitney & Dutch
No. 857. 5,000 No. 2, cash, corn, seller — ---------- 53
ac. Ira Foot.

[Written across the side in red ink :] Settled Oct. 29. Cash. Ac. Oct. 29th.

G.

789 Bought.

1875.

Sept. 16. Bo't of Moses, Jones & Bro.
No. 864. 5,000 No. 2 corn, seller Oct. ---------- 59
ac. Ira Foot.

[In pencil:] Put up 300.
[Written across the side in red ink:] Settled Oct. 8th. No. 898. Ac. Dec. 30th.

G.

Sept. 16. Bo't of A. Eichhold
No. 865. 5,000 No. 2 corn, seller Oct. ---------- 58½
ac. Ira Foot.

[Written across the side in red ink:] Settled Oct. 19. Cash. Ac. Dec. 30th.

G.

Oct. 8. Bo't of D. J. Lake
No. 899. 5,000 No. 2 corn, seller Nov. ---------- 54⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled Nov. 4. No. 926. Ac. Dec. 30th.

G.

Oct. 11. Bo't of Culver & Co.
No. 901. 5,000 No. 2 corn, seller Nov. ---------- 55
ac. Ira Foot. Contract.

[Written across the side in red ink:] Settled Oct. 23. No. 877. Ac. Dec. 30th.

G.

Oct. 11. Bo't of W. T. Templeton
No. 902. 5,000 No. 2 corn, seller Nov. ---------- 54⅞
ac. Ira Foot.

[Written across the side in red ink:] Settled Oct. 12. No. 896. Ac. Dec. 30th.

G.

Oct. 13. Bo't of Chas. Wetheral
No. 903. 5,000 No. 2 wheat, seller Nov. ---------- 1 07⅝
ac. Ira Foot, ac. H.

[Written across the side in red ink:] Settled Oct. 30. No. 917. Ac. Nov. 6th.

G.

Oct. 13. Bo't of W. S. Crosby
No. 904. 5,000 No. 2 wheat, seller Nov. ---------- 1 07⅝
ac. Ira Foot, ac. H.

[Written across the side in red ink:] Settled Oct. 18. No. 883. Ac. Nov. 6th.

G.

Oct. 21. Bo't of W. E. McHenry
No. 913. 5,000 No. 2 wheat, seller Nov. ---------- 1 07⅝
ac. Ira Foot, ac. Mr. H.

[Written across the side in red ink :] Settled Oct. 25. No. 910. Ac. Nov. 6th.

G.

Oct. 19. Bo't of S. H. Larminie & Co.
No. 914. 5,000 No. 2 corn, seller Nov. ac. Ira Foot. 50½

[Written across the side in red ink :] Settled Nov. 12. No. 957. Ac. Dec. 30.

G.

Nov. 3. Bo't of E. C. Duncan
No. 924. 5,000 No. 2 corn, seller Nov. ac. *Hooker. ac. Foot. 50⅞

[Written across the side in red ink :] Settled Nov. 30 with cash. Ac. Dec. 31st.

G.

Nov. 3. Bo't of E. C. Duncan
No. 925. 5,000 No. 2 corn, seller Nov. ac. *Hooker. ac. Foot. 51

[Written across the side in red ink :] Settled Nov. 30 with cash. Ac. Dec. 31st.

G.

790 Sold.

1875.
Dec. 30. Sold by J. S. P. & Co.
No. 864. 5,000 cash No. 2 corn, cash ac. Ira Foot. 50

[Written across the side in red ink :] Settled Dec. 30. Cash. Ac. Dec. 30th.

J. S. P.

Dec. 30. Sold by J. S. P. & Co.
No. 865. 5,000 cash No. 2 corn, cash ac. Ira Foot. 50

[Written across the side in red ink :] Settled Dec. 30. Cash. Ac. Dec. 30th.

[Written across the side in pencil :] This corn was carried for Foot; sold cash.

J. S. P.

Dec. 30. Sold by J. S. P. & Co.
No. 899. 5,000 cash No. 2 corn, cash ac. Ira Foot. 49½

[Written across the side in red ink :] Settled Dec. 30. Cash. Ac. Dec. 30.

J. S. P.

Dec. 30. Sold by J. S. P. & Co.

* Erased in copy.

No. 901. 5,000 cash No. 2 corn, cash ---------- 49½
ac. Ira Foot.

[Written across the side in red ink:] Settled Dec. 30. Cash. Ac. Dec. 30.

J. S. P.

Dec. 30. Sold by J. S. P. & Co.
No. 902. 5,000 cash No. 2 corn, seller cash ---------- 49½
ac. Ira Foot.

[Written across the side in red ink:] Settled Dec. 30. Cash. Ac. Dec. 30.

[Written across the side in pencil:] Cash corn carried for Foot.

J. S. P.

Oct. 11. Sold Wm. Young & Co.
No. 903. 5,000 No. 2 wheat, seller Nov., @ ---------- 1 07
ac. Ira Foot, ac. H.

[Written across the side in red ink:] Settled Oct. 13. No. 897. Ac. Nov. 6th.

G.

Oct. 12. Sold C. A. Mair & Co.
904. 5,000 No. 2 wheat, seller Nov. ----------
ac. Ira Foot, ac. H.

[Written across the side in red ink:] Settled Oct. 13. No. 883. Ac. Nov. 6th.

G.

Oct. 18. Sold Bensleys & Wagner
913. 5,000 No. 2 wheat, seller Nov., @ ---------- 1 10
ac. Ira Foot, ac. Mr. H.

[Written across the side in red ink:] Settled Nov. 20. No. *809. Ac. Nov. 6th.

G.

Dec. 30. Sold by J. S. P. & Co.
No. 914. 5,000 cash ins. 5 M corn, del'v. out, $2.50, cash ---- 49½
ac. Ira Foot.

[Written across the side in red ink:] Settled Dec. 30. Cash. Ac. Dec. 30.

[Written across the side in pencil:] This carried; sold cash.

J. S. P.

Dec. 31. Sold W. E. McHenry
No. 924. 5,000 No. — cash, Nov. 30, corn, cash ---------- 52
ac. Ira Foot.

[Written across the side in red ink:] Settled Dec. 31. With cash. Ac. Dec. 31st.

[Written across the side in pencil:] Cash & carried.

G.

[In pencil:] *908.

Dec. 31. Sold W. E. McHenry
No. 925. 5,000 No. — cash, No. 30; corn, cash ---------- 53
ac. Ira Foot.

[Written across the side in red ink:] Settled Dec. 31 with cash. Ac. Dec. 31st.

[Written across the side in pencil:] Cash & carried.

G.

791 Bought.

1875.

Dec. 7. Bo't of Hanchett & Co.
985. 5,000 No. 2 corn, seller Dec. ---------- 47½
ac. Ira Foot.

[In red ink:] Ac. Dec. 31st.
[In pencil:] Colby paid.

H.

Dec. 7. Bo't of Comstock & Son
986. 5,000 No. 2 corn, seller Dec. ---------- 47⅜
ac. Ira Foot.

[In red ink:] Ac. Dec. 31st.
[In pencil:] Colby paid.

H.

Dec. 8. Bo't of Kingsland & Co.
990. 5,000 No. 2 corn, seller Jan., @ ---------- 45
ac. Ira Foot.

[In red ink:] Ac. April 27th.

G.

Dec. 8. Bo't of Kingsland & Co.
991. 5,000 No. 2 corn, seller Jan., @ ---------- 45
ac. Ira Foot.

[In red ink:] Ac. April 27th.

G.

Dec. 8. Bo't of J. C. Hill, Field Densmore & Co.
992. 5,000 No. 2 corn, seller Dec. ---------- 48¼
ac. Ira Foot.

[In red ink:] Ac. Dec. 31st.

G.

Dec. 8. Bo't of J. K. Fisher & Co.
993. 5,000 No. 2 corn, seller Dec. ---------- 44⅛
ac. Ira Foot.

[In red ink:] Ac. Dec. 31st.

G.

1876.

Jan. 11. Bo't of Wm. Young & Co.
1017. 5,000 No. 2 corn, seller Jan., @ ---------- 44¼
ac. Ira Foot.

[In red ink:] Ac. April 27th.

H.

March 8. Bo't of Kingsland & Co.
1045. 5,000 No. 2 corn, seller May ---------- 47⅜
ac. Ira Foot.

[In red ink :] Ac. May 3.

G.

March 9. Bo't of Spruance, Preston & Co.
1046. 5,000 No. 2 corn, seller May ---------- 47¼
ac. Ira Foot.

G.

Morse, Ward & Co., 48⅜.

March 10. Bo't of W. T. Templeton
1047. 5,000 No. 2 corn, seller May ---------- 47
ac. Ira Foot.

HOOKER.

March 21. Bo't of H. J. Slater
1054. 5,000 No. 2 wheat, seller May, @ ---------- 1 08⅛
ac. Ira Foot.

G.

792 Sold.

Dec. 31. Sold Joseph Hill
985. 5,000 No. 2 corn, seller Dec. ---------- 50
ac. Ira Foot.

[Written across the side in red ink :] Settled Dec. 31. No. 985. Ac. Dec. 31st.

G.

Dec. 30. Sold J. C. Myers & Co.
986. 5,000 No. 2 corn, seller the year ---------- 49
ac. Ira Foot.

[Written across the side in red ink :] settled Dec. 30. No. 993. Ac. Dec. 31st.

G.

April 27. Sold W. T. Baker & Co.
990. 5,000 cash, Jan. 27th ; corn, cash ---------- 45
ac. Ira Foot.

[Written across the side in red ink :] Settled Ap'l 27 with cash. Ac. April 27th.

G.

April 27. Sold W. T. Baker & Co.
991. 5,000 cash, Jan. 28th ; corn, cash ---------- 45
ac. Ira Foot.

[Written across the side in red ink :] Settled April 27 with cash. Ac. April 27th.

[Written across the side in pencil :] Bo't for Jan. and delivered. Sold cash, Ap'l 27 ; corn.

G.

Dec. 31. Sold Field, Densmore & Co.
992. 5,000 No. 2 corn, seller Dec. ---------- 50
ac. Ira Foot.

[Written across the side in red ink:] Settled Dec. 31. No. 992. Ac. Dec. 31st.

G.

Dec. 31. Sold Cooley, D. & G.
993. 5,000 No. 2 corn, seller Dec.---------- 50
ac. Ira Foot.

[Written across the side in red ink:] Settled Dec. 31. No. 958. Ac. Dec. 31st.

G.

April 27. Sold W. T. Baker & Co.
1017. 5,000 cash, Jan. 17th; cash corn---------- 45
ac. Ira Foot.

[Written cross the side in red ink:] Settled April 27 with cash. Ac. April 27th.

[Written across the side in pencil:] Bo't Jan; sold cash Jan. 17; carried to Ap'l 27.

G.

April 27. Sold W. T. Baker & Co.
1045. 5,000 No. 2 corn, seller May, @---------- 46
ac. Ira Foot.

[Written across the side in red ink:] Settled April 29. No. 1058. Ac. May 3.

G.

April 27. Sold W. T. Baker & Co.
1046. 5,000 No. 2 corn, seller May---------- 46
ac. Ira Foot.

[Written across the side in red ink:] Settled May 1 with cash. Ac. May 3.

G.

April 27. Sold W. T. Baker & Co.
1047. 5,000 No. 2 corn, seller May---------- 46
ac. Ira Foot.

[Written across the side in red ink:] Settled May 1 with cash. Ac. May 3.

G.

March 20. Sold David Powers
1054. 5,000 No. 2 wheat, seller May, @---------- 1 08⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled M'ch 28. No. 1054. Ac. April 5th.

G.

793 Bought.

1876.
March 21. Bo't of John Dupee
1055. 5,000 No. 2 wheat, seller May, @---------- 1 08
ac. Ira Foot.

[Written across the side in red ink:] Settled March 21. No. 1053. Ac. April 5th.

G.

March 23. Bo't of Wm. Young & Co.
1060 5,000 No. 2 corn, seller May 49⅛
ac. Ira Foot. Contract.

[Written across the side in red ink:] Settled May 2 with cash. Ac. May 3rd.

G.

March 23. Bo't of Spear & Driver
1061. 5,000 No. 2 corn, seller May 49¼
ac. Ira Foot.

[Written across the side in red ink:] Settled May 1 with cash. Ac. May 3rd.
[In pencil:] April 6 we put up $250.

G.

March 24. Bo't of Wilkins, Whitney & Dutch
1062. 5,000 No. 2 corn, seller May 49½
ac. Ira Foot.

[Written across the side in red ink:] Settled M'ch 29. No. 1071. Ac. May 3rd.

H.

March 24. Bo't of Wilkins, W. & Dutch
1063. 5,000 No. 2 corn, seller May 49½
ac Ira Foot.

[Written across the side in red ink:] Settled April 10. No. 1057. Ac. May 3.

H.

March 27. Bo't of Morse, Ward & Co.
1072. 5,000 No. 2 corn, seller May 49⅛
ac. Ira Foot.

[Written across the side in red ink:] Settled April 28. No. 1062. Ac. May 3d.

G.

April 26. Bo't of Spear & Driver
1091. 5,000 No. 2 corn, seller June 46⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled May 29. No. 1084. Ac. May 31.

G.

April 26. Bo't of B. Adams & Co.
1092. 5,000 No. 2 corn, seller June 46⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled May 24. No. 1112. Ac. May 31.

G.

April 27. Bo't of W. T. Templeton
1104 5,000 No. 2 corn, seller June 45⅞
ac. Ira Foot.

[Written across the side in red ink:] Settled May 1. No. 1087. Ac. May 31.

G.

D. H. Lincoln, same price

April 27. Bo't of * W. T. Templeton
1105. 5,000 No. 2 corn, seller June ac. Ira Foot. 45⅞

[Written across the side in red ink:] Settled. Ac. May 31.

G.

April 27. Bo't of Geo. C. Tichenor
1106. 5,000 No. 2 corn, seller June ac Ira Foot. 45⅞

[Written across the side in red ink:] Settled. Ac. May 31.

G.

794 Sold.

1876.
March 20. Sold David Powers
1055. 5,000 No. 2 wheat, seller May ac. Ira Foot. 1 08⅝

[Written across the side in red ink:] Settled April 15. No. 1079. Ac. April 5th.
[In pencil:] April 7 he put up $250.

G.

April 27. Sold W. T. Baker & Co.
1060. 5,000 No. 2 corn, seller May ac. Ira Foot. 45⅞

[Written across the side in red ink:] Settled May 9 with 1066. Ac. May 3.

G.

April 27. Sold M. C. Comstock
1061. 5,000 No. 2 corn, seller May ac. Ira Foot. 45½

[Written across the side in red ink:] Settled April 28. No. 1052. Ac. May 3.

G.

April 21. Sold McDermid & Ortell
1062. 5,000 No. 2 corn, seller May ac. Ira Foot. 45½

[Written across the side in red ink:] Settled April 28. No. 1072. Ac. May 3.

G.

April 28. Sold Field, Densmore & Co.
1063. 5,000 No. 2 corn, seller May ac. Ira Foot. 45⅜

[Written across the side in red ink:] Settled May 2 with cash. Ac. May 3.

G.

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* Erased in copy.

April 28. Sold Field, Densmore & Co.
1072. 5,000 No. 2 corn, seller May ---------- 45⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled May 2 with cash. Ac. May 3.

G.

May 29. Sold by J. S. Peironnet & Co.
1091. 5,000 No. 2 corn, seller June ---------- 43¼
ac. Ira Foot.

[Written across the side in red ink:] Settled. Ac. May 31.

May 29. Sold D. H. Lincoln
1092. 5,000 No. 2 corn, seller June ---------- 43¼
ac. Ira Foot.

[Written across the side in red ink:] Settled. Ac. May 31.

May 29. Sold G. C. Tichenor
1104. 5,000 No. 2 corn, seller June ---------- 43¼
ac. Ira Foot.

[Written across the side in red ink:] Settled. Ac. May 31.

May 29. Sold by H. C. Munch
1105. 5,000 No. 2 corn, seller June ---------- 43⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled. Ac. May 31.

May 29. Sold by H. C. Munch
1106. 5,000 No. 2 corn, seller June ---------- 43⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled. Ac. May 31.

795 Bought.

1876.
April 27. Bo't of M. C. Baker
1107. 5,000 No. 2 corn, seller June ---------- 45⅞
ac. Ira Foot.

[Written across the side in red ink:] Settled May 20. No. 1076. Ac. May 31.

G.

April 27. Bo't of H. C. Munch
1108. 5,000 No. 2 corn, seller June ---------- 45⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled. Ac. May 31.

G.

April 27. Bo't of H. C. Munch
1109. 5,000 No. 2 corn, seller June ---------- 45⅜
ac. Ira Foot.

[Written across the side in red ink:] Settled. Ac. May 31.

G.

April 28. Bo't of Field, Densmore & Co.
1110. 5,000 No. 2 corn, seller June 45¼
ac. Ira Foot.
[Written across the side in red ink:] Settled. Ac. May 31.
G.

April 28. Bo't of Field, Densmore & Co.
1110. 5,000 No. 2 corn, seller June 45¼
ac. Ira Foot.
[Written across the side in red ink:] Settled. Ac. May 31.

April 6, to W. P. McLaren & Co., same price.

March 31. Bo't of * J. J. Richards
1367. 250 tcs. P. S. lard, seller May ..... 14c.
ac. Ira Foot.
[Written across the side in red ink:] Settled April 20. No. 1349. Ac. April 27th.
[In pencil:] Contract.
We put up $250.
" " " 250.
H.

April 25. Bo't of A. Geddes
1345. 250 tcs. P. S. lard, seller June 13 42½
ac. Ira Foot. Contract.
[Written across the side in red ink:] Settled April 27. No. 1375. Ac. May 5th.
N.

Feb. 29. Bo't of S. D. Foss & Co.
No. 451. 250 bbls. mess pork, seller March 21 40
ac. Ira Foot.
[Written across the side in red ink:] Settled March with cash. Ac. March 2nd.
N.

April 11. Bo't of J. R. Borman & Co.
470. 250 brls. mess pork, seller May 22 22½
ac. Ira Foot. Contract.
[Written across the side in red ink:] Settled April 26. No. 490. Ac. April 27th.
N.

796 Sold.

May 29. Sold by Field, Densmore & Co.
1107. 5,000 No. 2 corn, seller June 43¼
ac. Ira Foot.
[Written across the side in red ink:] Settled. Ac. May 31.

May 29. Sold by Field, Densmore & Co.
1108. 5,000 No. 2 corn, seller June 43¼
ac. Ira Foot.
[Written across the side in red ink:] Settled. Ac. May 31.

* Erased in copy.

May 29. Sold by W. N. Brainard
1109. 5,000 No. 2 corn, seller June ---------- 43¼
ac. Ira Foot.

[Written across the side in red ink:] Settled. Ac. May 31.

May 29. Sold by Geo. Webster
1110. 5,000 No. 2 corn, seller June ---------- 43¼
ac. Ira Foot.

[Written across the side in red ink:] Settled. Ac. May 31.

May 29. Sold by J. C. Myers & Co.
1110. 5,000 No. 2 corn, seller June ---------- 43¼
ac. Ira Foot.

[Written across the side in red ink:] Settled. Ac. May 31.

April 25. Sold A. Geddes
1367. 250 tcs. P. S. lard, seller May ---------- 13 27½
ac. Ira Foot.

[Written across the side in red ink:] Settled April 25. No. 363. Ac. April 27th.

N.

May 2. Sold J. K. Fisher & Co.
1345. 250 tcs. P. S. lard, seller June ---------- 12 27½
ac. Ira Foot.

[Written across the side in red ink:] Settled May 1. No. 1341. Ac. May 5th.

N.

Feb. 4. Sold John L. Hancock
No. 451. 250 brls. mess pork, seller March ---------- 20 52½
ac. Ira Foot. Contract.

[Written across the side in red ink:] Settled M'ch 1 with 450. Ac. March 2nd.

N.

Armour & Co ---------- 20 90

Feb. 29. Sold *S. D. Foss & Co.
470. 250 brls. mess pork, seller May ---------- 21 90
ac. Ira Foot. Contract.

[Written across the side in red ink:] Settled April 27. No. 496. Ac. April 27th.

N.

797 Which was all the evidence upon the hearing of said cause.
W. Q. GRESHAM.

Endorsed: Filed Apr. 4, 1887. Wm. H. Bradley, clerk.

*Erased in copy.

798 Afterwards, to wit, on the thirtieth day of April, 1887, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, J. Irving Pearce and Charles R. Steele, of the county of Cook and State of Illinois, are held and firmly bound unto James H. Rice in the full and just sum of five thousand dollars, to be paid to the said James H. Rice, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifth day of April, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, in a suit depending in said court between The Third National Bank of Chicago, as complainant, and Ira Foote and others, as defendants, in the original bill, and between J. Irving Pearce, assignee, &c., as complainant, and said bank and others, as defendants, in a cross-bill, and between James H. Rice, complainant, and said bank and others, defendants, in a cross-bill, a decree was rendered against the said J. Irving Pearce, as assignee of S. G. Hooker & Co., and said Third National Bank of Chi-
799 cago; and the said J. Irving Pearce, assignee of S. G. Hooker & Co., having prayed and been allowed an appeal to the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said J. Irving Pearce, as assignee of S. G. Hooker & Co., shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

J. IRVING PEARCE. [SEAL.]
CHAS. R. STEELE. [SEAL.]

Approved by—
H. W. BLODGETT, *Dist. Judge.*

Endorsed: Filed April 30, 1887. Wm. H. Bradley, clerk.

800 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein The Third National Bank of Chicago is the complainant and Ira Foote; J. Irving Pearce, assignee of S. G. Hooker and Company; James H. Rice, *et al.* are the defendants, as the same appear from the files and records of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this fourth day of June, 1887.

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 51. J. Irving Pearce, as assignee of S. G. Hooker & Company, appellant, *vs.* James H. Rice. Filed May 12, 1888.

In the United States Supreme Court.

J. IRVING PEARCE, Assignee, etc., }
vs.
JAMES H. RICE. }

And now comes the said J. Irving Pearce, assignee, etc., by his solicitor in the above-entitled cause, and says in the record and proceedings of the said United States circuit court in this cause and in the rendition of the final decree entered in favor of James H. Rice there is manifest error in the following, among other, things:

First. The court erred in dismissing the bill of J. Irving Pearce, assignee, etc., for want of equity.

Second. The court erred in not decreeing that the only issue in said cause was as to the truth of the facts set forth in the plea filed by the Third National Bank of Chicago and by the said J. Irving Pearce, assignee, etc.

Third. The court erred in not dismissing the cross-bill of James H. Rice, the truth of the plea filed by the Third National Bank of Chicago and J. Irving Pearce, assignee, etc., having been fully established.

Fourth. The court erred in decreeing that the said James H. Rice was the equitable owner of the two notes for five thousand (5,000) dollars each, dated July 1, 1876, and executed to the trustees of the Couch estate.

Fifth. The court erred in decreeing that the consideration for the transfer of the said notes by Ira Foote to the firm of S. H. Hooker & Co. was a gambling consideration and the assignment void as between said Foote and his assignee for value and said S. H. Hooker & Co. and their voluntary assignee, said J. Irving Pearce, and in setting aside said assignment.

Sixth. The court erred in decreeing that upon payment by said James H. Rice to said Third National Bank of Chicago of the amount due said bank upon said indebtedness of said Hooker & Co. to said bank the said Rice was entitled to have a delivery of said notes to him, together with an assignment of the judgment of said bank against said Foote.

Seventh. The court erred in decreeing that upon the payment of the amount due said Third National Bank of Chicago by said Rice within thirty days from the date of said decree the said bank should deliver said notes to said Rice, together with an assignment, duly executed, of said judgment in its favor against said Foote.

Eighth. The court erred in not decreeing that said J. Irving Pearce, assignee, etc., was entitled to the balance due upon said notes after the judgment in favor of the Third National Bank of Chicago had been satisfied and discharged.

Ninth. The court erred in not setting aside the order of reference to the master.

Tenth. The court erred in admitting irrelevant, immaterial, and improper testimony, and especially all testimony as to the question whether the notes given by said Foote to said Hooker & Co. were based on a gambling contract, the said question having already been adjudicated upon in the suit of the Third National Bank of Chicago *vs.* Footy, and therefore could not be properly raised in the present suit.

Eleventh. The court also erred in other matters appearing of record.

Wherefore said appellant prays that for the errors aforesaid the said final decree of the said United States circuit court against said appellant may be annulled, reversed, and altogether made as nothing, and that the cause may be remanded to the said circuit court, with directions to correct all and singular the errors aforesaid, and thereupon to enter decree in favor of the said appellant for the balance remaining due upon said notes made by the said Couch estate as aforesaid, after the payment of the judgment rendered in favor of the Third National Bank of Chicago against Ira Foote.

HUNTINGTON W. JACKSON,
Solicitor for J. Irving Pearce, Assignee, &c.

[Endorsed:] Sup. Court U. S. Oct. term, 1891. No. 51. J. Irving Pearce, assignee, etc., app't, *vs.* James H. Rice. Assignment of errors. Lyman & Jackson, attorneys, 55 Portland block, Chicago.

[Stamped:] Office Supreme Court U. S. Filed Jul. 6, 1891. James H. McKenney, clerk.

Office Supreme Court U. S.
FILED,
OCT 12 1891
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

No. 51.

J. IRVING PEARCE, AS ASSIGNEE OF S. G. HOOKER & COMPANY,
Appellant,
vs.
JAMES H. RICE,
Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT FOR APPELLANT.

HUNTINGTON W. JACKSON,
SOLICITOR FOR APPELLANT.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1891.

No. 51.

J. IRVING PEARCE, AS ASSIGNEE OF S. G. HOOKER & COMPANY, *Appellant*,
vs.
JAMES H. RICE, *Appellee*.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT.

The question presented by this record is, can a stranger, in this case James H. Rice, one who was not a party to the suit at law, but who claims an interest in the notes upon which judgment was rendered, by virtue of an assignment of the said notes made by the judgment debtor several years after the rendition of judgment, file a bill to set aside the judgment rendered upon the notes in question after a full and fair trial upon the merits of the controversy, the controversy being whether the notes were given for alleged gambling transactions on the Chicago Board of Trade? We contend that the bill should be dismissed.

On the 17th of April, 1882, a judgment was recovered in the United States Circuit court for the Northern district of Illinois, in favor of the Third National Bank of Chicago against Ira Foote. The amount of the judgment was $14,635.55. (Rec., 409.) The suit was on a guarantee of payment by said Ira Foote of two promissory notes of $5,000 each, made by the trustees of the estate of Ira Couch, both dated July 1, 1876, and made payable to said Ira Foote, one on July 1st, and the other on October 1, 1877. (Rec., 373.) The notes in question were delivered to the Third National Bank, with the guarantee of the defendant, Foote, written thereon, about December 30, 1876, as collateral security for the payment of a note of S. G. Hooker & Co. to the bank for the sum of $13,912.97, due from the firm to the bank for money loaned; the note of Hooker & Co., being dated December 30, 1876, payable to the bank in ninety days after date. (Rec., 405.)

The defendant, Foote, filed pleas averring that the two notes in question were transferred by him to the firm of S. G. Hooker & Co. in settlement of a claim of indebtedness due from him to said firm for certain gambling dealings conducted by the firm for him on the Chicago Board of Trade. (Rec., 374, 375.)

The defendant, Foote, also filed a plea of set-off. (Rec., 376.)

A trial was had and after evidence had been introduced and a full hearing had, judgment was rendered against Foote. (Rec., 408, 409.)

The execution in the above judgment having been returned unsatisfied, a creditors' bill was filed September 21, 1882, by the said bank against the said Foote, James

H. Rice and others. The bill contained the general charges and prayer for discovery usual in creditors' bills. (Rec., 2.)

October 9, 1882, an injunction was issued restraining the defendants, Foote, Rice and others, from selling, assigning, collecting or incumbering, etc., any debts, bonds, notes belonging or due or held in trust for Foote, etc. (Rec., 11, 12, 13, 23, 24.)

On October 31, 1882, the court appointed R. E. Jenkins receiver of Foote, and ordered Foote to transfer and deliver all notes, and that he also make an assignment of all his property and effects to said receiver. (Rec., 14.) This was done November 1, 1882. (Rec., 380.)

November 1, 1882, Ira Foote conveyed all his property to Robert E. Jenkins as receiver. (Rec., 380.) On the same day Ira Foote made a sworn statement of the property owned by him. In this statement no exception is made to the two notes upon which the Third National Bank obtained judgment as aforesaid. (Rec., 381.)

January 20, 1883, Ira Foote filed his answer to the original bill substantially admitting the allegations of the bill. No claim was made in Foote's answer that the notes were given for gambling transactions on the Board of Trade. The answer admitted the transfer of all his property to Jenkins as receiver. (Rec., 19.)

May 2, 1883, J. Irving Pearce was made defendant to original bill and leave given to file cross-bill. Rec., 21–22.

On August 4, 1884, J. Irving Pearce, as assignee of Hooker & Co., filed a petition averring that the two notes upon which judgment in favor of the bank had been rendered, with other property, had been assigned to him

by an assignment (Rec. 34–406), dated February 27, 1877, made by S. G. Hooker & Co., which assignment was in full force and effect. The said Pearce further averred that the judgment in favor of said bank largely exceeded the amount of said debt of Hooker & Co. to the bank, and that the balance of said judgment, after payment of the debt due to said bank, should be collected and paid over to said Pearce. Wherefore he prayed for an order making him a party defendant to the original bill, and for leave to file a cross-bill.

February 25, 1885, the master made his report finding that after payment from the judgment against Foote of the amount due the bank from Hooker & Co., there would still be a surplus left. (Rec., 28.)

On February 25, 1885, Ira Foote transferred his interest in the two notes, upon which judgment was rendered in favor of the bank to J. H. Rice. (Rec. 408.) We remark that this attempted transfer was made on the same day on which the master found that the amount of the judgment rendered in favor of the bank was in excess of the debt due said bank from said Hooker & Co., for which said notes on which judgment was rendered were held by the bank as collateral security. (Rec. 28.) It was undoubtedly on this day that the plan as set forth in Rice's cross-bill, filed March 23, 1885, was conceived to obtain possession of the surplus. (Rec. 42.) It is upon this "interest" that his cross-bill is filed.

On March 16, 1885, J. Irving Pearce answered, averring that he was appointed assignee of S. G. Hooker & Co., on the 27th of February, 1877, and that as such assignee he was entitled to the notes on which judgment had been rendered in favor of the bank against Foote,

and also the judgment after the indebtedness of S. G. Hooker & Co. to the bank had been paid. (Rec., 30–36.)

March 16, 1885, J. Irving Pearce, as assignee of S. G. Hooker & Co., filed his cross-bill against the Third National Bank of Chicago, Ira Foote, James H. Rice and others. (Rec., 30.)

This cross bill averred that about the 28th of February, 1877, Stephen G. Hooker and George D. Lincoln, co-partners under the name of S. G. Hooker & Co., executed and delivered to said Pearce a general assignment of their property and effects for the benefit of their creditors. (Rec., 34) Cross-complainant further averred that, as assignee, he had incurred various liabilities and made and incurred large expenses for costs, etc., in litigation to enforce claims belonging to S. G. Hooker & Co., and is entitled to compensation for his services as assignee. The cross-bill further averred that among the assets assigned were the two notes upon which the bank recovered judgment, as before stated; that at the time of the assignment the two notes were held by the bank as collateral security to the indebtedness of Hooker & Co., and that as assignee of Hooker & Co. he is entitled to the proceeds of the judgment rendered against Foote after the indebtedness of Hooker & Co. is paid to the bank. (Rec., 33.)

March 23, 1885, J. H. Rice, filed his answer to the original bill, amending the answer on May 27, 1885, (Rec., 47,) in which he sets forth, as he alleges, the manner in which S. G. Hooker & Co. obtained said two notes and Foote's guaranty thereon, on which said judgment was based. (Rec., 37.) These allegations are repeated in J. H. Rice's cross-bill, (Rec., 42,) and will be more fully referred to hereafter.

In this answer Rice asserts for the first time that he is the *bona fide* owner of the notes upon which the judgment was rendered. (Rec., 39.)

May 27, 1885, Ira Foote filed an amendment to his answer adopting the answer of J. H. Rice to the original bill and cross-bill of J. Irving Pearce. (Rec., 47.)

March 23, 1885, James H. Rice filed an answer to the cross-bill of J. Irving Pearce, denying the several allegations of the cross-bill, and averring that the judgment in favor of the bank against Foote was void as being based on a gaming contract. (Rec., 40, 41.)

June 11, 1885, the bank filed its answer to the cross-bill of Pearce, admitting the several allegations. This answer does not appear in the record, but is included (p. 12) in the printed record before the Circuit court.

March 23, 1885, James H. Rice filed his cross-bill against the Third National Bank, Ira Foote, J. Irving Pearce *et al.*, averring that the consideration of the two notes transferred by Foote to Hooker, as well as the guaranty made by Foote on the notes, said notes being the same on which judgment was rendered in favor of the bank, was a wager or bet on the price of grain and provisions, and constituted an option contract, prohibited by section 130 of chapter 38 of the Statutes of Illinois. (Rec., 42.)

The cross-bill further avers that Foote transferred and assigned all his interest, for a valuable consideration, in said two notes, to Cross-complainant Rice, and that cross-complainant was the owner of the two notes transferred to said bank. No mention of the date of the transfer is given, but we have already seen that it was less than a month before. (Rec., 408.)

The cross-bill prays that the judgment rendered in favor of the bank may be vacated, annulled and set aside, and that if the court shall refuse then, that the judgment be vacated upon payment by Cross-complainant Rice to the bank of such sum as may be due the bank from Hooker & Co. upon surrender of said notes.

June 2, 1885, J. Irving Pearce filed his answer to the cross-bill of James H. Rice, and averred that in the suit in which judgment was rendered in favor of the bank against Foote, the said Foote pleaded to the declaration that the supposed causes in the declaration mentioned were upon the consideration of money won by Hooker & Co. from the said Foote by gaming, setting forth the pleas at length. (Rec., 51.)

The said Pearce further averred that issues were joined on said pleas and upon the trial of said cause said Foote appeared and offered evidence and was heard and had his day in court, and that upon such trial the issues were found in favor of the plaintiff and against Foote; and that the judgment is in full force and effect as by the record and files of said court will more fully appear. The said Pearce set up the said trial, finding and judgment as a final adjudication of all the matters therein tried and determined, and prayed that he might have the same benefit as if he had pleaded the same; that the matters in said cross-bill alleged were substantially the same matters alleged and set up by said Foote in his defense in said suit; that said matters have been adjudicated and are forever settled by the judgment in said suit, and that said judgment is a bar to any relief upon the grounds stated in said cross-bill.

Defendant further answering without waiving said bar avers that all the transactions between Hooker & Co.

were valid and *bona fide* sales and purchases by the rules of the board of trade and the laws of the State of Illinois.

Defendant denied that Foote conveyed his interest in said two notes for a valuable consideration to cross-complainant Rice, and avers if any such transfer has been made by Foote it was done without consideration and to hinder and defraud creditors and was void, and denied that Foote had any interest in said notes at any time since said notes were transferred to Hooker & Co. (Rec., 55.)

June 24, 1885, the Third National Bank, of Chicago, filed its plea and answer to the cross-bill of Rice, in which it set forth the pleas of gambling and set-off filed by Foote in the suit of the bank against Foote, and further averred that issue having been taken upon the pleas the said issue came up to be tried before the Hon. Henry W. Blodgett, that a jury was waived, that a full defense was made by counsel on behalf of said Foote, and after evidence was given on behalf of said bank as of said Foote, the court found the issues in favor of the bank, and delivered an opinion which is set out at length in said plea. (Rec., 59–67, 379.) 11 Bissell, 223.

The bank further averred that the judgment rendered against Foote was the same which the said Rice seeks ot vacate, and doth plead the same in bar to so much of the bill as is to be pleaded unto and insisting upon its plea answered, avering that all the transactions between Hooker & Co. and Foote were valid and *bona fide* and sanctioned by the board of trade and the laws of Illinois. Defendants further averred that when the account was rendered by Hooker & Co. to Foote, showing a large balance of indebtedness from Foote to Hooker & Co. for losses incurred and moneys paid out for and on account of said Foote, and commissions for transacting the busi-

ness and for services rendered in buying and selling property on his account and for divers sums of money and interest thereon, paid to said Foote from time to time, which were chargable to said Foote and for insurance premiums and expenses arising from the storing of the goods so purchased and other causes, that said Foote made objections to some of the charges, and that a compromise was made and a balance agreed upon as due Hooker & Co. from Foote, and the said Foote made and delivered to Hooker & Co. his note for the amount due, and that subsequently Foote desiring to pay the note delivered to Hooker, the four notes mentioned in the cross-bill of Rice, together with a small amount of cash in payment in satisfaction of his note, the said four notes being guaranteed by Foote.

Defendant further answering denied the allegations of notice that the indebtedness of Foote to Hooker was based upon gambling transactions, and averred that said notes were taken by said bank in good faith as collateral security for money loaned and justly due the bank.

Defendant charged the fact to be that after its collection of the judgment against said Foote and the payment from said sum of the amount due it, the balance should be paid to said Pearce by virtue of the assignment to him by Hooker & Co.

Defendant averred that if Foote transferred his interest in said notes to Rice, it was in violation of the injunction heretofore issued, and was void. Defendant denied that the original transaction between Hooker & Co., and Foote was a wager prohibited by section 130, chapter 38 of the Statutes of Illinois.

Replications were filed by the bank and Pearce to the

answer of Rice (Rec.. 49–50), by the bank and Rice to the answer and plea of Pearce. (Rec., 37–58.)

Replications were also filed by Rice to the answer of the bank (Rec., 58.) and upon motion to dismiss the cross-bill of Rice for want of replication to the plea of the bank, a replication to the plea of the bank was also filed by Rice. (Rec., 68, 69.)

On page 76 of the record the solicitors for Mr. Pearce and the bank objected to all questions in the examination of witnesses with reference to whether the transactions of Foote and Hooker & Co., were or were not gambling contracts, the solicitors contending that the matter had already been adjudicated in a suit at law and could not be properly raised in the present suit in chancery. It was stipulated by counsel that this objection should be considered as extending to all questions to which the objection applied during the further examination of witnesses.

On page 228 of the record the solicitors for Mr. Pearce and the bank moved to strike out all of the testimony taken under the cross-bill of Rice for the reason that under the pleas filed by Mr. Pearce and the bankto the said cross-bill they contended that the only evidence which could be properly taken was with referenee to the truth of the pleas, and if the truth of the pleas was established, that all evidence tending to re-open the case was immaterial, irrelevant and improper. This motion was denied, to which ruling exceptions were taken.

On page 379 of the record the counsel for Mr. Pearce and the bank, offered the pleas and the opinion of the court in the case of the *Third National Bank of Chicago* v. *Ira Foote* for the purpose of showing that the identical ques-

tions sought to be raised by the cross-complainant, Rice, viz: whether the two notes in said declaration named were given and received in a gambling transaction and were therefore void, was raised, litigated and decided in the foregoing suit at law and was therefore *res adjudicata* and cannot be retried in the present cause.

On page 382 motion was made to strike out all the testimony of James H. Rice and Ira Foote, relating to the assignment of the notes upon which judgment was rendered against the said Foote in favor of the bank, or the assignment of those notes to Mr. Rice, the cross-complainant, on the ground that the said notes had been shown by the deed of conveyance to have been previously assigned under order of the court to Robert E. Jenkins, the receiver, and any assignment of those notes by Foote to Rice would be a violation of the injunction heretofore issued in the case.

The decree (Rec., 70), was entered April 4, 1887, and found:

(1.) That the bank was entitled to be paid the amount, to wit: $8,459, due it upon the note of S. G. Hooker & Co.

(2.) That the cross-bill of J. Irving Pearce should be dismissed.

(3.) That James H. Rice was the equitable owner of the two notes of $5,000, that the consideration of the transfer of the notes by Foote to Hooker & Co. was a gambling consideration, and the assignment void as between said Foote and his assignees for value, and said Hooker & Co. and their voluntary assignee J. Irving Pearce, and said assignment is hereby wholly set aside as between said parties; that upon payment by said Rice of

the amount due the bank from Hooker & Co., the said Rice is entitled to have a delivery of said notes to him, together with an assignment of the judgment of said bank against said Foote; that Rice, the complainant in the cross-bill to recover his costs npon said cross-bill. (Rec., 71.)

J. Irving Pearce, assignee, etc., prays an appeal.

Assignment of Errors.

1. The court erred in dismissing the bill of J. Irving Pearce, assignee, etc., for want of equity.

2. The court erred in not decreeing that the only issue upon the cross-bill of Rice was as to the truth of the facts set forth in the pleas filed by the Third National Bank of Chicago, and by the said J. Irving Pearce, assignee, etc.

3. The court erred in not dismissing the cross-bill of James H. Rice, the truth of the plea filed by the Third National Bank and said Pearce, assignee, etc., having been fully established, and it having been shown that the said Rice was not a "person interested" as contemplated by the statute.

4. The court erred in decreeing that said Rice was the equitable owner of the two notes for $5,000 each, dated July 1, 1876, and executed by the trustees of the Couch estate.

5. The court erred in decreeing that the consideration for the transfer of the said notes by Ira Foote to the firm of S. G. Hooker & Co. was a gambling consideration and the assignment void as between said Foote and his assignee for value and saidS. G. Hooker & Co. and their voluntary assignee, said J. Irving Pearce, and in setting aside said assignment.

6. The court erred in decreeing that upon payment by said James H. Rice to said Third National Bank of Chicago of the amount due said bank upon said indebtedness of said Hooker & Co., to said bank, the said Rice was entitled to have a delivery of said notes to him, to-

gether with an assignment of the judgment of said bank against said Foote.

7. The court erred in decreeing that upon the payment of the amount due said Third National Bank of Chicago by said Rice within thirty days from the date of said decree the said bank should deliver said notes to said Rice, together with an assignment duly executed, of said judgment in its favor against said Foote,

8. The court erred in not decreeing that said J. Irving Pearce, assignee, etc., was entitled to the balance due upon said notes after the judgment in favor of the Third National Bank of Chicago had been satisfied and discharged.

9. The court erred in admitting irrelevant, immaterial and improper testimony, and especially as to the question whether the notes given by said Foote to said Hooker & Co., were based on a gambling contract, the said question having already been adjudicated upon in the suit of the Third National Bank of Chicago *v.* Foote in said court, and therefore could not be properly raised in the present suit.

10. The court also erred in other matters, appearing of record.

BRIEF.

I.

The facts in the pleas of the bank and Pearce to which replications were filed by Rice, having been proved, the cross-bill filed by Rice should have been dismissed.

Rule 33 of Equity Rules of the U. S. Sup-Ct.
Desyty Fed. Prod., 696.
Camman v. *Traphagen*, 1 Saxton N. J., 230.
Meeker v. *Marks*, 1 Saxton N. J., 202.
Meyer v. *Dorr*, 13 Blatch., 23.
Story Eq. Pl., 697.
Hughes v. *Blake*, 6 Weaton, 453.

II.

A decision of a controversy by a court of competent jurisdiction, whether common law or equity, upon a full and fair trial on the merits, cannot be re-examined or the matters again drawn into question unless in an Appellate forum.

Wright v. *Washington*, 5 Gratt., 647.
Rice v. *Gordon*, 7 Mo., 247.
West v. *Carter*, 129 Ill., 249.
Same case, 25 Ill., Appeals, 245.
Same case, 35 Ill., Appeals, 497.
Geddes v. *Lea*, 3 Humphreys, 133.
Clay v. *Fry* 3 of Bibb., 248.
Freeman ou Judgments, 501, 502.

Jevene v. *Osgood*, 57 Ills., 341.
LeGuen v. *Gouvernuer*, 1 Johnson's cases, 436, 492.
Hempstead v. *Watkins*, 1 Eng. Ark., 318.
Hendrickson v. *Hinkle*, 17 How., 443.
Harrington v. *Washington*, 14 Ark., 218.
Bank of U. S. v. *Beverly*, 1 How., 134.
Cromwell v. *County of Sac*, 94 U, S., 351.
Gelston v. *White*, 3 Wheat., 243.
Hopkins v. *Lea*, 6 Wheat., 472.
Campbell v. *Goodale*, 8 Brad., 472.
Bennett v. *Wilmington Star Mining Co.*, 119 Ill., 10.
Prickett v. *Morris*, 2 Wash. Va., Bracket pag 255.

III.

Rice not being a party to the judgment against Foote and the judgment at the time of its rendition not affecting any of his rights, he is not a party in interest and should not be permitted to file his cross-bill to set aside the judgment.

Freeman on Judgments, Sec. 512.
Stone v. *Towne*, 91 U. S., 341.
Pinney v. *Finkenhorn*, 25 Qhio St. Rep., 113.
Carter v. *West*, 129 Ill., 249.

IV.

The transactions between *Hooker & Co.* and *Foote*, were not prohibited by the Illinois statutes.

H. W. Jackson Recr. of 3d Natl. Bank v. *Foote*, 11 Bissell, 223.

ARGUMENT.

I.

The facts in the pleas of the bank and of Pearce, to which replications were filed by Rice, having been proved, the cross-bill by Rice should have been dismissed.

We insist that if the facts in the pleas of the Third National Bank and J. Irving Pearce to which replications were filed by Rice are proven the dismissal of the cross-bill of Rice is simply a matter of course. We claim that the facts set forth in the pleas have been fully proved and that a decree should have been entered in favor of Mr. Pearce. All the pleadings in the case upon which judgment was rendered were offered in evidence. (Rec., 370, 379.) The opinion of the court was also offered in evidence. (Rec., 379, and 11 Bissell, 223.) The orders of the court show (Rec., 408, 409) that on March 27 and 28, 1882, the evidence was heard by the court and the arguments of counsel presented and the case taken under advisement; that on April 17, 1882, the court found the issues for the plaintiff and assessed its damages at $14,635.55 and costs; that there was also a motion for a new trial, which was overruled. (Rec., 409.) Upon the point as to the effect of the plea when the same is proven we refer to the following authorities:

Upon a bill filed and injunction allowed to restrain proceedings at law, and on plea of judgment recovered; upon which issue was joined and proofs taken in support

of the plea, it was held that the facts of the plea appearing to be proved, the injunction was dissolved, and the bill dismissed with costs.

Camman v. *Traphagen*, 1 Saxton, N. J., 230.

If the plea be allowed by the court as correctly pleaded and is afterwards proved, the case is at an end. "The "allowance of a plea," says Lord Redesdale, "is as "complete a judgment against the claims of the plaintiff, "as can be given on the most solemn and deliberate hear- "ing of the cause on the pleadings and proofs provided "the truth of the plea be established by the evidence."

Meeker v. *Marks*, 1 Saxton N. J., 202.

Rule 33 of Equity Rules of the United States Supreme Court provides that if upon an issue of facts stated in the plea be determined for the plaintiff, they should avail him so far as in law and equity they ought to avail him, and if the facts are proved, the dismissal of the bill is a matter of course.

Desty Fed. Pro., 696.

Where the plaintiff in equity replies to the plea he admit its sufficiency as a defense when the facts it alleges shall be established.

Meyers v. *Dorr*, 13 Blatch., 23.
Story Eq. Pl., Sec. 697.

A replication to a plea is an admission of the sufficiency of the plea as much as if it had been set down for argument and allowed, and all that the defendant has to do is to prove it in point of fact, and a dismission of the bill on the hearing is then a matter of course.

Hughes v. *Blake*, 6 Wheaton, 453.

II.

A decision of a controvery by a court of competent jurisdiction, whether common law or equity, upon a full and fair trial on the merits cannot be re-examined, or the matters again drawn into question, unless in an Appellate forum.

We contend that the provisions of the statute under which this bill is filed to vacate a judgment refers to cases where no defense has been made at law.

Sec. 130, Chap. 38, Illinois Criminal Code, Starr & Curtis Statutes, provides that whoever contracts to have or give to himself or another the option to buy, at a future time, any grain or other commodity, stock of any railroad or other company, or gold, or forestalls the market by spreading false rumors to influence the price of commodities therein, or corners the market, or attempts to do so in relation to any of such commodities, shall be fined not less than $10 nor more than $1,000, or confined in the county jail not exceeding one year, or both; and all contracts made in violation of this section shall be considered gambling contracts, and shall be void.

Sec. 171, Chap. 38, Illinois Criminal Code, provides that all promises, notes, bills, bonds, covenants, contracts, agreements judgments, mortgages, or other securities or conveyances made, given, granted, drawn or entered into or executed by any person whatsoever, where the whole or any part of the consideration thereof shall be for any money property or other valuable thing won by any gaming or playing at cards, dice, or any other game or games, or by betting on the side or hands of any person gaming, or by wager or bet upon any race, fight, pastime, sport,

lot, chance, casualty, election or unknown or contingent knowingly lent or advanced at the time and place if such play or bet, to any person or persons so gaming or betting or that shall, during such play or betting, so play or bet, shall be void and of no effect.

Sec. 183, Chap. 38, Illinois Criminal Code provides that all judgements mortgages, assurances, bonds, notes, bills, specialties, promises, covenants, agreements and other acts, deeds, securities or conveyances given, granted, drawn or executed contrary to the provisions of this act may be set aside and vacated by any court of equity upon bill filed for that purpose, by the person so granting, giving, entering into or executing the same, or by his executors or administrators, or by any creditor, heir, devisee, purchaser *or other person interested therein;* or if a judgement, the same may be set aside on motion of any person aforesaid on due notice thereof given.

In *Abrams* v. *Camp*, 3 Scam., 290, it is held that where the defendant has a defense at law, as on gaming contract, and suffers judgment against him through neglect, equity will not vacate the judgment against him.

The above case is overruled, and the rule was laid down that defendant might neglect to assert defense at at law and then obtain vacation in equity.

Mallett v. *Butcher*, 41 Ill., 382.

In *Lucas* v. *Nichols*, 66 Ill., 41, it was held that equity will vacate such judgments, though defense not made at law. A contrary doctrine has been held in some of the states.

In the case *Geddes* v. *Lea*, 3 Humphreys 133, it was held that when a party has a full, equitable and unembarrassed defense at law and no defense is made, a court of

chancery has no power to relieve. This however as we have seen, is not according to the decision of the Illinois Supreme court, which held in a case like the one at bar, that if the defense is not availed of in law it can be made in chancery.

To the same effect is the case of *Clay* v. *Fry*, 3 Bibb 248.

In the suit at law before Judge Blodgett evidence was presented and the court held that the transactions between Foote and Hooker & Co., was not a gaming contract. The cross-bill of Rice in this case, therefore, does not lie, as the question involved is *res adjudicata*.

There is no allegation in Rice's cross-bill of newly discovered evidence. The object of the cross-bill is simply to obtain a new trial. The allegation is that the judgment is void. The proper course would have been for Foote to have appealed from the judgment. It is a firmly established rule that a party failing to make a defense at law should not be permitted to come into equity and have such a defense allowed unless he can show that he was prevented by fraud, accident or mistake. If a party sued at law makes his defense, then he is considered as electing to defend at law and is bound to present the defense which he can. His election to defend at law is considered as irrevocably made by offering any defense whatever. It matters not whatever by demurrer to declaration by pleading in abatement or at bar. It is therefore a general rule that parties are to be held in the exercise of caution and diligence in the management of their lawsuits and are not to be allowed a double opportunity of presenting their defenses.

Freeman on Judgments, 501 and 502.
Jevene v. *Osgood*, 57 Ill., 341.

LeGuen v. *Gouvernuer*, 1 Johnson's cases 436 and 492.

In a case of concurrent jurisdiction if a party defends at law chancery will not take cognizance of the cause and rehear it upon the same state of facts upon which it was tried at law without the addition of some equitable circumstances to give jurisdiction, but will respect the judgment of a court of competent jurisdiction already pronounced.

Hempstead v. *Watkins*, 1 English Ark., 318.
Henderickson v. *Hinckle*, 17 Howard, 443.
Arrington v. *Washington*, 14 Ark., 218.

The fact or controversy once decided by a competent tribunal cannot be re-examined by another court of concurrent jurisdiction, in a suit between the same parties or their privies.

Bank of United States v. *Beverly*, 1 Howard, 134.
Cromwell v. *County of Sac*, 94 U. S., 351.

A decree of such court is conclusive whenever the same matter is again brought in controversy.

This rule applies to the courts of chancery jurisdiction as well as courts at law.

Gelston v. *Hoyt*, 3 Wheaton, 243.
Hopkins v. *Lee*, 6 Wheaton, 109.

The effect of a judgment, if rendered upon its merits as a bar or estoppel, is a finality not only to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.

Cromwell v. *County of Sac.*, 94 U. S., 351.

A judgment upon a promissory note is as between the parties to the record and their privies, conclusive as to the validity of the instrument.

Campbell v. *Goodale*, 8 Brad., 472.

The doctrine of *res adjudicata* embraces not only what has been actually determined in the former suit, but also extends to any other matter properly involved and which might have been raised and determined in it. Therefore, a decree on the merits is conclusive as to all defenses that might have been interposed. The conclusive effect of a former adjudication sometimes applies to persons not parties to the record, but who have acquired rights *pendente lite*.

Bennett et al. v. *Wilmington Star Mining Company, et al.*, 119 Ill., 10.

When the whole question has been completely before the jury, accompanied by no circumstances which could prevent a full and fair decision of the case by that body, there is no remedy but in the Appellate court. If the party apply for relief to a court of equity he must rely upon other grounds than legal errors in the decision complained of. When a case is fully and fairly tried in a court of law, the decision is binding upon the party, and a re-examination of the cause in a court of equity is certainly improper. The parties, by submitting to the decision of that tribunal, must be governed by it, whether it be right or wrong.

Pickett v. *Morris*, 2 Wash., Va., bracket page 255.

When a case has been decided upon its merits, the judgment cannot be opened in chancery or a new trial obtained without there has been accident, mistake or fraud. The bill alleges none of these things. All the evidence

taken in the present case with reference to the alleged gambling transactions, as well as the alleged assignment from Foote to Rice was objected to and motions made to have the same struck out. (Rec., 76, 228, 379, 382.)

In the case of *Wright* v. *Washington*, 5 Gratt., 647, the court said: "It is doubtless true that a decision of "the controversy by a court of competent jurisdiction, "whether common law or equity, upon a full and fair "trial on the merits, cannot be re-examined or the matter "again drawn into question, unless in an Appellate forum."

Again the court said, page 649: "It must be admitted, "however, that in a case founded upon a gaming promise "or security, if the defendant elects to make his defense "at law, and upon a full and fair trial of the case in that "forum, a verdict is rendered against him, he cannot be "permitted to renew the controversy upon adverse testi- "mony in a court of equity, for if this was allowed, it "would be in effect an appeal from the verdict of a "jury."

In *Hughes* v. *Gordon*, 7 Mo., 247, the court said: "To "suppose that a judgment obtained by due process of law "where no defense was made or an *unavailing one* could "be set aside on motion, or re-examined by a chancellor "on allegations of a gaming consideration would create "an anomaly in the law." An examination of the case of *West* v. *Carter*, 129 Ill., 249, will, we think, demonstrate that the remark, "this being so, it can make no "difference that the defense *was* or might have been "made in the suit at law to recover judgment upon "an illegal contract," was inadvertantly made. A determination of that question was not necessary. The complainant had filed his bill to set aside a judgment alleged to have been based on a gambling contract, and

the case turned upon the question of whether the complainant, who was a surety upon a bond, given on an appeal from a judgment rendered against the Chicago Driving Park Association was "a person interested "therein" as contemplated by the statute, and the court held he was not. This is decisive of the present case.

The same case of *West* v. *Carter*, is decided by the court of appeals, 25 Ill. Appeals, 245 and 35 Ill. Appeals, 497.

III.

Rice not being a party to the judgment against Foote and the judgment, at the time of its rendition, not effecting any of his rights he is not a party in interest and should not be permitted to file his cross-bill to set aside the judgment.

No person will be permitted to proceed in equity against a judgment or decree to which he was not a party and which did not at its rendition affect any of the rights.

Freeman on Judgments, Sec. 512.
Stone v. *Towne*, 91 U. S., 341.

Foote's notes were not assigned to Rice until long after the rendition of the judgment, nor until long after Foote's deed to the receiver, Jenkins was delivered. (Rec., 408.)

The notes had been merged into the judgment. The general rule is that the record of a judicial proceeding does not include any person who is not a party to it, but it is also true that such records include not only parties and privies, but strangers likewise as to the fact that

such proceedings were had, and that such judgment was rendered.

Pinnery v. *Finkenhorn*, 25 Ohio St. Rep., 113.

Under the Illinois statutes, we contend that Rice cannot prosecute his cross-bill. The statute provides that all judgments * * * notes * * * given, granted drawn or executed, may be set aside and vacated by any court of equity upon bill filed for that purpose by the person so granting, giving, entering into or executing the same, or by his executors, or administrators, or by any creditor, heir, devisee, purchaser or other person interested therein. Mr. Rice does not file his cross-bill as a "creditor, heir, devisee, purchaser or other person interested therein." He simply alleges (Rec., 44), the transfer and assignment of the notes in question. Neither does the evidence, we submit, satisfactorily show that Rice was a creditor of Foote. (Rec., 157.) He is only the assignee of the notes, and they have been merged into the judgment and were assigned to him long after the rendition of the judgment. The cross-bill was also filed several years after the rendition of the judgment. Rice asked to have the judgment set aside, but he was not interested in the judgment at the time it was rendered. At the time Foote made the assignment to Rice he had nothing to assign. All of his property of every description had been conveyed several years before to Jenkins, the receiver, and that transfer was still in force. It is clear then that Rice took nothing by the alleged assignment, and is therefore not a party in interest.

In *Carter* v. *West*, 129 Ill., 249, it was held that a voluntary surety on an appeal bond, given on appeal from a judgment on a gambling contract, is not a "person inter-

"terested therein," and, therefore, cannot maintain a bill to set aside such judgment. The statute also provides, "or if a judgment, the same may be set aside on "motion of any person aforesaid, on due notice thereof "given."

The record shows no motion was made by Rice to set aside the judgment. The only motion for a new trial was made by Foote (Rec., 409), and no cause was assigned for making same. Neither the discovery of new evidence, nor surprise nor fraud was alleged. The motion was overruled, and no appeal was prayed for.

IV.

The transactions between Hooker & Co. and Foote were not prohibited by the Illinois statutes.

Again, we claim that a review of the evidence in the present case demonstrates that it is in no way different from the evidence presented at the time of the trial before Judge Blodgett. The opinion of Judge Blodgett shows this: His decision is a clear and full presentation of the evidence. (11 Bissell, 223.) Upon this record Judge Blodgett would have made the same decision as was made in the law case. The testimony of Lincoln, Norton and Geetmacher (Rec., 167, 238, 348), it will be seen upon referring to Judge Blodgett's opinion is substantially the same as in the suit at law. The testimony of Hooker must be disregarded as he was impeached by numerous witnesses. (Rec., 367, 385, 388, 390.) Pearce's equity is superior to any one after the Third National Bank has been satisfied. He represents the creditors of Hooker & Company. Upon

payment to the bank of its indebtedness, Pearce should receive the balance. Mr. Pearce is entitled to be paid for his services and expenses as assignee. If all the creditors of Hooker & Company have been paid under the assignment, then the surplus should go to Hooker and Lincoln or their representatives.' The judgment being a valid one, they are entitled to what remains after the bank and their creditors under the Pearce assignment, have been paid. The equity of Hooker and Lincoln is superior to that of Rice or Foote. We submit that the judgment cannot be divided and found valid as to the bank and invalid as to Pearce and we therefore ask that the cross-bill of Rice may be dismissed and a decree may be entered in conformity with the prayer of the cross-bill of appellant Pearce.

Respectfully submitted.

HUNTINGTON W. JACKSON,
Solicitor for Appellant.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

No. 51.

J. IRVING PEARCE, AS ASSIGNEE OF S. G. HOOKER & COMPANY, *Appellant*,
vs.
JAMES H. RICE, *Appellee*.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

REPLY BRIEF.

HUNTINGTON W. JACKSON,
SOLICITOR FOR APPELLANT.

IN THE

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Appeal from the Circuit Court of the United States for the Northern District of Illinois.

REPLY BRIEF.

Counsel for appellee, page 47 of their brief say: "The "contention of the appellant that the pleas filed by Mr. "Pearce to the cross-bill of Rice is a bar, is not well "taken. In the first place no such plea was filed by Mr. "Pearce. The plea was filed only by the Third Na- "tional Bank and not by Pearce as stated by appellant's "counsel." It appears that Mr. Pearce plead to part of Rice's cross-bill and answered to the residue. This is set out at length. (Rec. 51–56.) In this plea and answer Pearce "set up the trial, the finding and judgment of the "suit at law as a final adjudication of all matters therein "tried and determined, and prayed that he might have

"the same benefit and advantage as if he had pleaded "the same; that the matters in said cross-bill alleged were "substantially the same matters alleged and set up by "said Foote in his defense in said suit; that said matters "had been adjudicated and forever settled by the judg- "ment in said suit and the said judgment was a bar to "any relief upon the ground stated in said cross-bill. He "further averred that the trial, finding and judgment in "said suit against said Foote settled that it was not a "gaming contract, and he averred that he relied upon and "set up said judgment as an adjudication of said matter." No objection to this plea and answer was made by the counsel for Rice, and if there was any objection to it, it was waived.

Counsel further say, page 47, "The case was never "set down for hearing upon the plea as provided for in "the equity rules but the court on the final hearing by "this decree sustained the plea to the extent of finding "that Mr. Rice, the cross-complainant, must pay the "Third National Bank all that Hooker & Co., owed it, "viz: $8,459, and that upon such payment Mr. Rice "became entitled to said two notes and the assignment of "the judgment against Foote."

Under rule 33, the counsel for cross-complainant had the option of setting down the plea to be argued or to take issue on the plea. He decided upon the latter course and filed replications, both to the answers and pleas of Pearce and the bank. Counsel are mistaken in saying that the decree sustained the plea to the extent of finding that Mr. Rice must pay the bank all that Hooker & Co. owed it. That was not the issue. The issue presented by the pleas was whether the judgment against Foote could be vacated, annulled and set aside, and the facts set

forth in the pleas having been proved, we contend that the cross-bill should have been dismissed. If the plea was good to part of the cross-bill it must have been good to the whole of it.

Appellee's argument proceeds upon the theory that the decisions of the Supreme court of Illinois in the cases of *Tenney* v. *Foote* and *Pearce* v. *Foote* (Brief, 53, 60) should be decisive of the present case. This we do not admit. A comparison of the decision of Judge Blodgett with those in the cases above mentioned will show that the testimony before Judge Blodgett must have been different in many material facts from the testimony in the cases cited, and that the decision of Judge Blodgett was correct upon the testimony before him. A conclusive answer, however, to the objection of counsel is found in the fact that Foote did not appeal from the decision of Judge Blodgett. He could have done so, but did not, and it was not until nearly three years after the rendition of the judgment against him that he attempted to transfer his interest in the notes to Rice. At that time he had no interest in the notes, as whatever interest he may have had, had been merged into the judgment against him. How, we ask, could Foote transfer any interest in the notes while the judgment was alive and not vacated?

At the time of the alleged assignment of Foote to Rice, Rice was thoroughly familiar with all the transaction which had been carried on between Hooker & Co. and Foote. They had been partners in business for a great many years. (Rec., 146.) Rice acted for Foote in the settlement of the claim of Hooker & Co. against Foote, and personally delivered the notes in question with others to Hooker & Co., in settlement of Foote's indebtedness. (Rec., 91 and 148.) Rice, therefore, cannot claim to be an innocent holder, and in fact he does not.

On page 4, of our opening argument, we said it was on February 25, 1885, that Foote transferred his interest to Rice. This was a mistake. The date of the transfer was on the 16th day of February, 1885, (Rec., 408), being the same day (Rec., 27) that the cause was referred to the master to report the amount due from Hooker & Co., to the bank. The coincidence of these dates is not without significance. The alleged transfer was undoubtedly made in order to enable Rice to file a cross-bill to reach the surplus which it was anticipated would be left over and above the amount due the bank.

The prayer of Rice's cross-bill, (Rec., 46) is:

First. That the judgment rendered in favor of the bank against Foote may be vacated, annulled and set aside.

Second. That if, for any of the reasons, the court shall not grant the vacation of the judgment as prayed for, then the judgment shall be vacated, annulled and set aside upon the payment by Rice to the bank of the amount due said bank from Hooker & Co.; the said Rice offering to pay the said amount upon surrender to him of said notes.

Third. That said bank be ordered and decreed to return the said notes, and for such other and further relief as equity may require.

The decree (Rec., 71) did not vacate or set aside the judgment as prayed for either absolutely or upon the condition of the payment by Rice of the amount due the bank. It found:

First. That the bank was entitled to be paid the amount due it.

Second. That the cross-bill of Pearce should be dismissed.

Third. That Rice was the equitable owner of the two notes; that the consideration of the transfer of said notes by Foote to Hooker & Co., was a gambling consideration, and that the assignment was void and should be set aside.

It further found that Rice was entitled to a delivery of the notes, together with an assignment of the judgment, upon payment by him of the amount due the bank from Hooker & Co.

The decree, it will be seen, does not follow the prayer of Rice's cross-bill. The relief given is wholly different from that sought by the cross-bill. Neither can the decree be sustained by the provisions of the statute upon which Rice's cross-bill is based. That provision is as follows:

Section 135, Criminal Code, Chap., 38: "All judgments, mortgages, assurances, bonds, notes, bills, specialties, promises, covenants, agreements, and other acts, deeds, securities, contrary to the provisions of this act may be set aside and vacated by any court of equity upon bill filed for that purpose by the person so granting, giving, entering into or executing the same, or by his executors or administrators or by any creditor, heirs, devisee, purchaser, or other person interested therein; or if a jugment, the same may be set aside on motion of any person aforesaid on due notice thereof given."

Under the decree which has been entered no judgment has been set aside, neither has any note been set aside. The decree without setting aside the judgment against Foote, as prayed for in the cross-bill, sets aside the transfer of the notes by Foote to Hooker & Co. How, we again ask, can the transfer of the notes by Foote to Hooker & Co., and by Hooker & Co. to the bank be set

aside or partly set aside, without first vacating and setting aside the judgment rendered by virtue of that very transfer? That judgment is also a bar to all subsequent transfers by Foote. Again, this transfer has not been set aside "*upon bill filed for that purpose by the person so* "*granting, giving, entering into or executing the same, or* "*by his executors or administrators.*" Neither, we contend, has the transfer been set aside "*by any creditor,* "*heir, devisee, purchaser, or other person interested* "*therein.*"

Counsel on page 74, of their brief quote a portion of Mr. Rice's testimony for the purpose of showing that Rice was a creditor of Foote. An examination of the testimony utterly fails to show that he was such creditor. The cross-bill of Rice does not allege that he was a creditor. It simply alleges that Foote assigned all of his interest in the notes to Rice. (Rec., 44.) We have seen that this assignment (Rec., 408), was not made until Frebruary 16, 1885, and the query arises, what was the consideration of the assignment? Was Rice a creditor of Foote at the time of the rendition of the judgment April 17, 1882? It is by no means certain that he was a creditor, but if he was, has he not been paid in full, and does not the account stand the other way? Is not Rice indebted to Foote or to his estate, Foote having deceased?

Rice was asked on cross-examination (Rec., 157): "Q. Do you know whether you loaned him (Foote) money "in 1880? A. I have been paying out money for him all "the time. Q. Do you know whether you paid anything in "1880? A. Couldn't tell. Q. Anything in 1881? A. "Yes, sir. Q. How much did you pay in 1881? A. I "couldn't tell. Q. You say you don't know whether you

"advanced any money to him on his account in 1880, do "you? (Rec., 158.) A. I think, probably, in 1880 he "may not have got much. Q. Have you advanced $5,000 "on his account in 1881? A. I couldn't tell; have been "paying money all the time. Q. Could you say you ad- "vanced $2,500 in 1881? A. Yes, sir. Q. More than "that. A. A good deal. Q. How much, then, in your "opinion, have you advanced to him since 1881? A. I "couldn't tell. * * * " It also appears from Rice's testimony (Rec., 157 and 158) that Rice had received from Foote, in money and securities, at least $16,000, so that under the most liberal construction of Mr. Rice's testimony it is impossible to find that he is a creditorof Foote. On the contrary, we submit that it conclusively appears that Foote was a creditor of Rice at the time of the alleged assignment of Foote to Rice. If the transfer from Foote to Rice was made simply for convenience, and in order to enable Rice to file a cross-bill, the actual indebtedness of Rice to Foote, should the decree in this case be affirmed, would be thereby so much increased. If Rice, as alleged in his cross-bill, was the *bona fide* owner of the two notes, it was incumbent upon him to prove affirmatively that he was a creditor of Foote, but that he has failed to do so will, we think, be demonstrated beyond question by a careful consideration of the testimony, and his cross-bill should, therefore, be dismissed. In his direct examination he failed to give any testimony upon the question of the consideration of the transfer of Foote's interest to him. What little evidence was extracted from him in the cross-examination was obtained from a most unwilling witness.

To note with what care the counsel for cross-complainant Rice approached this important subject it is only

necessary to read the questions propounded. The witness exercised equal care in replying. The counsel said (Rec., 147): Q. "I will ask you, Mr. Rice, if Mr. "Foote has assigned to you his interest in the two notes "which were turned out to the firm of S. G. Hooker & "Co. in 1876?" A. "Yes, sir." Q. "Are you the "owner of these two notes at the present time?" A. "Yes, sir." These were the only questions relative to the alleged transfer addressed to Rice in the direct examination. There were no questions asked as to the consideration or the indebtednes, if any, from Foote to Rice. These were carefully avoided. Neither was Mr. Foote called upon to give any testimony respecting the alleged assignment. He was not even interrogated upon the subject.

The language of the court in the case *West* v. *Carter*, 129 Ill., 249, is so pertinent to this branch of the case, and as we think decisive of the case at bar, that we make the following quotation: "It is not contended that the "complainant in this bill (appellee here) falls within "either class of persons designated who may file a bill "under this statute, unless it be the latter, 'or other per-"sons interested therein.' It is not alleged in the bill, or "shown, that the appellee is an officer, stockholder or "creditor of the driving park association (defendant in "the common law judgment), or in any way interested "in the driving park or its estate, assets or funds, or in "the judgment rendered against it. The collection of "the judgment in favor of West, against the driving "park association, would in no way affect appellee, or "any estate or fund to which he had any right or in "which he had any interest, until he voluntarily became "security upon the appeal bond entered into by the driv-

"ing park association to enable it to re-try its cause in the "Circuit court, as it might do under the statute. IN NO "SENSE CAN APPELLEE BE SAID TO BE A PERSON "'INTERESTED,' EITHER IN THE ORIGINAL CON-"TRACT OR IN THE JUDGMENT RENDERED THERE-"ON by the justice of the peace, within the con-"templation of the section of the statute quoted. "In respect to this judgment he was a mere vol-"unteer, who, at the instance of the defendant, volun-"tarily obligated himself to pay the judgment rendered "against his principal by said justice, and all costs occa-"sioned by the appeal, in case the appeal was dismissed in "the Circuit court, as we have seen was done. *It cannot "effect the standing of the appellee, or discharge his obliga-"tion, that his principal might, either at law or in equity, "have avoided the judgment. It is sufficient to say that the "principal has not sought to do so, either upon motion or by "bill*, and the appeal having been dismissed, appellee's lia-"bility upon his bond became fixed, upon non-payment of "judgment and costs by his principal, against which lia-"bility a court of equity is not authorized, either by this "statute or by its general powers, to relieve him."

The court found that West was not "interested either "in the original contract or in the judgment rendered "therein." The same language presents in precise terms Rice's relation to the "original contract and the judgment "rendered thereon."

Before the decree of the court below can be affirmed it appears to us that all of the following conditions must concur.

First. That Rice is a creditor of Foote or is a person interested "in the original contract or in the judgment "rendered thereon," as contemplated by the statute.

Second. That notwithstanding the judgment against Foote was rendered after an exhaustive and fair trial on the merits of the case, Rice, who was not a party in interest at the time of the rendition of the judgment, will be permitted to file a cross-bill to vacate the judgment and obtain other and different relief from that prayed for.

Third. That Foote, notwithstanding the judgment against him had not been vacated or set aside, had at the time of the alleged assignment to Rice an assignable interest in the notes in question.

Fourth. That the transactions between Hooker & Co. and Foote are void under the statute of Illinois.

In our opinion none of these conditions concur and if one is wanting the decree should be reversed.

Respectfully submitted.

HUNTINGTON W. JACKSON,
Solicitor for Appellant.

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vs.
JAMES H. RICE, *Appellee*.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT FOR APPELLEE.

LEWIS H. BISBEE,
ROBERT H. KERN and
FRANK F. REED,
ATTORNEYS FOR APPELLEE.

IN THE

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vs.

JAMES H. RICE, *Appellee*.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT FOR APPELLEE.

The original bill in this case was filed by the Third National Bank of Chicago, September 21, 1882. It is a creditor's bill and is based upon a judgment recovered by the Third National Bank against Ira Foote in the United States Circuit court for said Northern District of Illinois, on the 17th day of April, 1882, for $14,635.55. The bill shows execution issued on the 15th day of July, 1882, in said Northern District of Illinois, where said Foote resided, and the return thereof unsatisfied on the 20th day of September, 1882. The bill contains the usual charges in such cases and the usual prayer for discovery on other

matters, all of which are immaterial to the issue before this court.

The defendants in the bill are Ira Foote, James H. Rice, *et al.*

On October 31, 1882, Robert E. Jenkins was appointed receiver of all the property, etc., of Ira Foote, and Ira Foote was ordered to assign to said receiver under the direction of Henry W. Bishop, master.

Ira Foote answered January 20, 1883, in which he avers that the judgment set up in the bill was recovered on the indorsement by Foote of two promissory notes, which the complainant in the bill held as collateral security for the payment of a note executed by S. G. Hooker and George D. Lincoln, by the name of S. G. Hooker & Co.; that said last mentioned note was also secured by other collateral security out of which the said last mentioned note has been nearly, if not fully paid, and he insists in his answer that the complainant cannot recover against Foote more than is legally due on said S. G. Hooker & Co's. note.

James H. Rice filed his answer to the original bill March 23, 1885, in which he sets up the facts, as he claims them to be, with reference to the said judgment and to the manner in which Hooker & Co. obtained the two notes on Foote's guarantee, on which the said judgment was based. These allegations are repeated in J. H. Rice's cross-bill, to which reference is made for particulars of this answer.

On the 27th day of May, 1885, this answer was amended by some additional allegations as to the history of said judgment, which are also contained in Rice's cross-bill.

J. Irving Pearce, assignee of S. G. Hooker & Co., who was made defendant after the filing of the original bill (February 12, 1885), filed his answer to the original bill March 16, 1885, in which he avers that the judgment mentioned in the bill was recovered on two promissory notes, held by the complainant as collateral security for the indebtedness of S. G. Hooker & Co., and that as assignee of S. G. Hooker & Co. for the benefit of their creditors, he is entitled to said notes and judgment after the indebtedness of S. G. Hooker & Co. to said complainant is paid. The answer avers that the assignment of S. G. Hooker & Co. to this defendant was made on the 27th day of February, 1877.

J. Irving Pearce and James H. Rice both filed cross-bills.

J. Irving Pearce filed his cross-bill March 16, 1885, against the Third National Bank of Chicago, Ira Foote, James H. Rice, William H. Wood, Caroline E. Couch and James Couch, the last three as trustees for Ira Couch, deceased, and others. This cross-bill states that on the 28th of February, 1877, Stephen G. Hooker and George D. Lincoln, copartners under the name of S. G. Hooker & Co., executed and delivered to said Pearce a general assignment of all their property and effects for the benefit of their creditors, of which a copy is attached; that said Pearce accepted the trust, and, as such assignee, is entitled to all the rights given him by such assignment; that he has paid a dividend of thirty per cent. on all claims against S. G. Hooker & Co.; that the balance remains unpaid, but that, as assignee, he has incurred various liabilities and large expenses for costs, fees, etc., in litigation to enforce claims belonging to S. G. Hooker & Co., and is entitled to a large sum for compensation for his

services as assignee; that among the assets assigned were two promissory notes for $5,000 each, dated July 1, 1876, made by William H. Wood, Caroline E. Couch and James Couch, as trustees of the estate of Ira Couch, deceased, one payable July 1, 1877, and the other payable October 1, 1877, to the order of Ira Foote and by said Foote indorsed and guaranteed; that when the assignment was made these notes were held by the Third National Bank, as collateral for the indebtedness of S. G. Hooker & Co. to the bank, which, on December 30, 1876, was $13,912.27 but which has since been reduced by collections from other colleraterals; that on the 17th of April, 1882, said bank recovered judgment in the Circuit court of the United States for the Northern district of Illinois against Ira Foote, as guarantor of said notes for $14,-635.55 which is the judgment on which said original bill is based and that the said J. Irving Pearce as such assignee, is entitled to the proceeds of said judgment after the indebtedness of S. G. Hooker & Co. to said bank is paid, together with costs of suit; that about May 12, 1879, complainant paid to Huntington W. Jackson, receiver for said bank, to apply on the claim of said bank against S. G. Hooker & Company, $1,570.45, that being thirty per cent. of the said claim; that at said time said bank held other collaterals sufficient to pay the balance of said claim and that the creditors of S. G. Hooker & Company had no other fund to which they could look but to the property assigned to complainant; that when said thirty per cent. was paid some creditors protested, and complainant paid it under protest, with the understanding that if the receiver could collect the whole debt due to the bank from the collaterals held by said bank, said sum should be repaid to complainant; that after pay-

ing said indebtedness to said bank out of the proceeds of said judgment, there will be a balance of about $7,000 which should be paid over to the complainant in the cross-bill.

The prayer of this cross-bill is that an account may be taken of the amount due from Ira Foote on said judgment, and of the amount due from S. G. Hooker & Co. to the Third National Bank, and that Foote may be decreed to pay the balance due on said judgment, after deducting the amount so to be paid to the Third National Bank to said J. Irving Pearce as assignee of S. G. Hooker & Co., and that said bank may be decreed to pay back to the said J. Irving Pearce the said sum of $1,570.45.

To this cross-bill, the defendant, James H. Rice, answered March 23, 1885, denying generally the allegations of the bill, excepting that said answer admits that the bank held said two notes of the trustees of the Couch estate as collateral to an indebtedness of S. G. Hooker & Co. to the bank of about $13,912.97 originally, and which has since been reduced by collections to about the said sum of $7,500; admits the recovery of judgment by said bank against said Foote as guarantor of said notes.

Also admits that on the 12th day of May, 1879, Pearce paid to the receiver of the Third National Bank $1,570.45, as a dividend upon the claim of the bank against Hooker & Co., and which was indorsed upon the note of S. G. Hooker & Co., evidencing their indebtedness of $13,912.97, and avers that said payment was voluntarily made, and protests against the Third National Bank being ordered to collect this judgment against Ira Foote, and after retaining the amount due to the bank, to pay over the balance of said judgment to said J. Irving Pearce; it

avers also that said payment made by said Pearce was made more than five years before the filing of his cross-bill, and that action to recover the same is barred by the statute of limitations of the state of Illinois, and that said judgment is void, the contract on which it was based being a gaming contract, and sets out the statute of Illinois upon that subject. (Sec. 130 Criminal Code.)

The Third National Bank filed an answer to this cross-bill on the 11th day of June, 1885, admitting the principal allegations of the cross-bill and substantially in harmony with the cross-bill.

James H. Rice's Cross-Bill.

James H. Rice filed his cross-bill in this case on the 23d day of March, 1885, making the Third National Bank, Ira Foote, William H. Wood, James Couch, Caroline E. Couch, the last three as trustees of the estate of Ira Couch, deceased, J. Irving Pearce, assignee, of S. G. Hooker & Co., defendants.

Out of this cross-bill arises the real litigation in this case, and we, therefore, set it out somewhat in detail.

This cross-bill charges that in 1874 and 1875, and a portion of the year 1876, S. G. Hooker and George D. Lincoln were co-partners under the firm name of S. G. Hooker & Co., doing business as commission merchants on the Chicago Board of Trade; that said Ira Foote then was, and for more than twenty years prior thereto, had been a contractor and builder in the city of Chicago; that in 1875, Foote entered into an agreement with Hooker & Co., by which Hooker & Co. were to deal in differences for said Foote by purporting to buy and sell grain and provisions upon the Chicago Board of Trade for the ac-

count of said Foote, such purchases and sales to be executed in some future month; that in no event were any purchases or sales to be to remain open until the day of delivery, but in all cases were to be settled prior to maturity by the payment or collection by said S. G. Hooker & Co., of the difference between the price of the article thus pretended to be purchased or sold and the market price upon the Chicago Board of Trade at the time of closing such trades; that there was to be no delivery of any article sold or purchased, and that no cash, grain or provisions whatever was to be dealt in; that under this agreement Hooker & Co. undertook to enter into contracts to buy and sell for the account of Foote on the Chicago Board of Trade, and claimed that they did make such contracts between November, 1874, and June, 1876, for the sale and purchase of large amounts of corn, etc., wheat, pork and lard, and claimed that they paid out differences or as they termed it, losses arising in such transaction in pursuance of said contract between Hooker & Co. and said Foote; that in the month of June, 1876, said Hooker & Co. rendered an account of such purchases and sales to said Foote claiming to show the indebtedness of said Foote to said Hooker & Co., on account of such alleged losses, claimed to have been paid by said Hooker & Co. to be about the sum of $22,000; that to settle said account said Foote turned over to S. G. Hooker & Co. four notes of $5,000 each dated July 1, 1876, signed by the trustees of the Ira Couch estate, and payable to the order of said Ira Foote in three, six, nine and twelve months from the date thereof, which notes were guaranteed upon the back by said Ira Foote, and that the balance of said account was paid by said Foote in cash; that in December, 1876, said two of the four notes with other col-

laterals, were placed in the Third National Bank of Chicago as collateral security for an indebtedness of S. G. Hooker & Co., of about thirteen thousand dollars ($13-000); that soon thereafter said firm of S. G. Hooker & Co. made a voluntary assignment to one J. Irving Pearce for the benefit of creditors; that said Ira Foote has transferred and assigned all his interest for a valuable consideration in said to five thousand dollar notes to the complainant (in the cross-bill) who the *bona fide* owner of the two notes thus transferred to the said Third National Bank; that the judgment described in the original bill is based wholly upon the guaranty of said Foote upon the two notes of five thousand dollars ($5,000) each, thus placed as collateral security in said Third National Bank; that the original transaction between S. G. Hooker & Co. and said Foote was a mere wager on the price of grain and provisions, and constituted an option contract, prohibited by section 130 of chapter 38 of the revised statutes of the State of Illinois, which reads as follows:

"Gambling in grain, etc. Whoever contracts to have "or give to himself or another the option to sell or put "at a future time, any grain or other commodity, stock "of any railroad or other company, or gold, or forestalls "the market by spreading false rumors to influence the "price of commodities therein, or corners the market or "attempts to do so, in relation to any of such commodi-"ties, shall be fined not less than ten dollars nor more "than one thousand dollars, or confined in the county "jail not exceeding one year, or both; and all contracts "made in violation of this section shall be considered "gambling contracts, and shall be void."

That the consideration of said Ira Foote's guaranty on said two notes failed, and no title whatever to said two

notes passed from said Ira Foote to said S. G. Hooker & Co., and that the sale and transfer of said two notes to complainant in cross-bill vested the title of said two notes in him.

That at the time the action was brought on the guaranty on which the judgment in the original bill was obtained, there was only due from said S. G. Hooker & Co. to the Third National Bank the sum of about six thousand dollars; that on the 25th of February, 1885, there was only due said Third National Bank from S. G. Hooker & Co., including interest at ten per cent., the sum of $7,508.75, and at six per cent. only the sum of $7,204.52.

The cross-bill further charges that by virtue of section 136, chapter 38, of Revised Statutes of the State of Illinois, which statute reads: "no assignment of any "bill, note, bond, covenant, agreement, judgment, mort-"gage or other security or conveyance, so aforesaid, "shall in any manner affect the defense of the person "giving, granting, drawing, entering into or executing "the same, or the remedies of any person interested "therein;" inasmuch as the original transaction between Foote and S. G. Hooker & Co., was a gaming contract and absolutely void, the Third National Bank could not claim said notes as an innocent purchaser.

The cross-bill further charges that by virtue of section 135, of said chapter 38, of the Revised Statutes of the State of Illinois, all judgments granted upon any gaming contract may be set aside and vacated by any court of equity, upon bill filed for that purpose. This section reads as follows:

"All judgments, mortgages, assurances, bonds, notes, "bills, specialties, promises, covenants, agreements and

"other acts, deeds, securities or other conveyances, given "granted, drawn or executed, contrary to the provisions "of this act, may be set aside and vacated by any court "of equity, upon bill filed for that purpose, by the person "so granting, giving, entering into, or executing the same, "or by his executors or administrators, or by any cred- "itor, heir, devisee, purchaser or other person interested "therein; or if a judgment, the same may be set aside "on motion of any person aforesaid, on due notice thereof "given."

This cross-bill was amended by leave of court, May 27, 1885, by inserting the averment that the Third National Bank received said two notes of $5,000 each from the firm of S. G. Hooker & Co, with full knowledge that the same were turned over to S. G. Hooker & Co., with the guaranty of Ira Foote thereon, in settlement of an illegal and gambling debt, claimed by S. G. Hooker & Co. to be due from Ira Foote, and that said notes are liable to the same defense in the hands of said bank as they would have been from the hands of S. G. Hooker & Co.

The prayer of this cross-bill is:

First. That the judgment rendered on the 17th day of April, 1882, in favor of said Third National Bank of Chicago against said Foote for $14,635.55, be vacated, annulled and set aside.

Second. That if the court shall not grant said prayer, the judgment may be vacated upon the payment by the orator to said Third National Bank of such sum of money as may be due to said bank from S. G. Hooker & Co., the orator offering to pay the amount due said bank from S. G. Hooker & Co. upon surrender to him of said notes.

Third. That the said Third National Bank be ordered to return said two notes of five thousand dollars each, dated July 1, 1876, and signed by the trustees of the estate of Ira Couch, deceased, to the orator, and that further and other relief conformable to equity may be granted, etc.

J. Irving Pearce answered the cross-bill July 2, 1885, admitting the allegations in regard to the recovery of the judgment as set out in the cross-bill, and avers that in said suit, in which said judgment was recovered, the said Foote pleaded to the declaration that the causes of action in the declaration mentioned were upon a consideration of money won by Stephen G. Hooker and George D. Lincoln under the firm name of S. G. Hooker & Co., from the defendant by gaming, to wit: by buying and selling for Foote on the board of trade deals and options in grain, wheat, lard and pork, etc.; and that by the force of the statute the said supposed promises were wholly void, and that said Foote further pleaded that said several supposed causes of action in the declaration were upon the consideration of money won by Stephen G. Hooker and George D. Lincoln from the defendant by gaming, to wit: dealings in options on grain and other commodities on the board of trade upon differences alone, wherein neither party had or was to deliver or receive any such article, and that by virtue of the statute, the said supposed promises were wholly void; that issues were joined on said pleas, and upon the trial, said Foote appeared and offered evidence and was heard and had his day in court, and that the issues were found in favor of the plaintiff in that suit and against said Foote, and that a judgment was entered upon such finding, in favor of the plaintiff and against said Foote, which said judgment still remains not

reversed or vacated, but in full force and effect, and the answering defendant prays that he may have the same benefit as if he had pleaded said facts, and claims that said matters are the same which are set up in said cross-bill, and that they have been adjudicated and forever settled in said suit, and that said judgment is a bar to any relief upon the ground stated in the cross-bill.

The said answering defendant, further answering, saving to himself said bar, admits that S. G. Hooker & Co. bought and sold and claimed that they bought and sold for account of Foote, on the Chicago Board of Trade, between November, 1874, and June, 1876, a large amount of corn, wheat, pork and lard; that they credited him with the profits and charged him with the losses in each transaction; that about June, 1876, they rendered an account of such transactions, showing a net loss of about $22,000, but denies that said purchases and sales were made pursuant to said agreement stated in the cross-bill, and denies that the loss claimed by S. G. Hooker & Co. arose from paying the differences in accordance with the contract alleged in said cross-bill, and avers that the articles bought and sold were sometimes delivered, and that the losses and profits were sometimes settled without delivery, and that all the transactions were valid, *bona fide* sales and purchases according to the rules of the Board of Trade; denies that said four notes, described in the cross-bill, were delivered by Foote to Hooker & Co., to settle said differences on account and avers on information and belief that Ira Foote and S. G. Hooker & Co. had a settlement upon the account rendered by S. G. Hooker & Co. to Foote, showing a large balance against Foote for losses and commissions, in which settlement compromises and deductions were made, and thereafter

Foote made and delivered to Hooker his promissory note for the amount agreed on, and that afterwards Foote delivered said four notes to Hooker with his guaranty thereon and paid a small amount in cash in satisfaction of his said note. This answer admits that in December, 1876, two of said four notes were delivered to the Third National Bank of Chicago as collateral security of an indebtedness of Hooker & Co. to the bank of about $13,000, but denies all notice, etc., and avers that said notes were taken in good faith as collateral security.

This answer avers the general assignment of S. G. Hooker & Company for the benefit of creditors on the 28th of February, 1877, to J. Irving Pearce; that said Pearce accepted the same and that by said assignment said two notes so assigned to the said bank as collateral security, were assigned to the defendant by J. Irving Pearce, subject to the claim of said bank; that said defendant has paid a dividend of 30 per cent. on the claims against Hooker and Company and that the balance of the claims against said company, amounting to several thousand dollars, remain unpaid; that the defendant, as such assignee, has paid large sums of money for costs, fees and expenses of litigation to protect and enforce claims belonging to said estate, and that he has been obliged to pay $8,000 to satisfy a judgment recovered against him by Ira Foote in a suit growing out of such assignment, and that said defendant is entitled to a large sum for his services as such assignee, and that after paying the amount due said bank from S. G. Hooker & Company, the defendant is entitled to the balance of said judgment against Foote. The answer also denies that said Foote conveyed his interest in said promissory notes for a valuable consideration to the complainant in said cross-bill; and

reversed or vacated, but in full force and effect, and the answering defendant prays that he may have the same benefit as if he had pleaded said facts, and claims that said matters are the same which are set up in said cross-bill, and that they have been adjudicated and forever settled in said suit, and that said judgment is a bar to any relief upon the ground stated in the cross-bill.

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avers that if any transfer of his interests has been made by Foote to the complainant, it was done to hinder, delay and defraud the creditors of Foote, and is void; denies that said Foote has any interest in said notes since he transferred the same to S. G. Hooker & Co.; denies that the original transaction was a wager or bet on the price of provisions and grain, or was such as prohibited by Section 130 of Chapter 138 in the General Statutes of Illinois; denies that the consideration on said guaranty has failed, but admits that said judgment against Foote was based on Foote's guaranty on said note; his answer also sets up the same agreement under which it is claimed the defendant paid the 30 per cent. dividend as is set up in the cross bill of said Pearce, to wit: That the same was paid with the understanding that it should be paid back to said Pearce if recovery could be had on said judgment against Foote.

The Third National Bank of Chicago filed a plea and answer to this cross-bill on the 24th day of June, 1885; the plea sets up the recovery in said suit in which said judgment was recovered, to wit: the suit of the Third National Bank of Chicago against Ira Foote in the Circuit court of the United States for the Northern district of Illinois as a bar to the claims in said cross-bill; setting out the pleas of Ira Foote in said suit to the declaration therein; that the causes of action therein set forth were gambling transactions on the Board of Trade in the city of Chicago, and that issues were found thereon and tried, and that the decision was against the said Foote: and sets up that a jury was waived in said cause, and the cause was tried before Hon. Henry W. Blodgett, judge of the said Circuit court, Northern district of Illinois; and also sets up the opinion of the court de-

livered at the time of ordering judgment in favor of the plaintiff in that cause. This opinion is a long one, and we will cite only so much thereof as is necessary for an understanding of the case.

The judge says: "This is a suit on a guarantee of "payment by defendant of two promissory notes of $5,- "000 each, made by the trustees of the estate of Ira "Couch, both dated July 1, 1876, and payable to defend- "ant, one on July 1st, and the other on October 1, 1887, "with interest at the rate of eight per cent. per annum. "The plaintiff is receiver of the Third National Bank of "this city, and the notes in question were delivered to the "bank with the guaranty of the defendant written there- "on about December 30, 1876, with other notes as col- "lateral security for the payment of a note of S. G. "Hooker & Co., for the sum of $13,900, due from that "firm to the bank for money loaned; the note of Hooker "& Co. being dated December 30, 1876, payable to the "bank in ninety days after date, with interest at ten per "cent. per annum. The defense insisted upon at the "trial is that the two notes in question were transferred "by the defendant to the firm of S. G. Hooker & Co. in "settlement of a claim or indebtedness due from the "defendant to said firm for certain gambling "dealings conducted by the firm for the defendant on the "Chicago board of trade. The facts, as developed by the "proof, appearing to be that in the fall of 1874, and for "about two years thereafter, the firm of S. G. Hooker & Co. "were brokers and commission merchants, dealing in "grain and provisions on the board of trade of this city, "were members of the board, and transacted business for "their customers under its rules and regulations; that "Foote had some dealings on the board through another

" broker, in which his broker had taken in and paid for a
" large quantity of oats which had been bought on an
" order for the defendant, but the expenses of storage,
" interest, etc., had been so large that the defendant had
" become dissatisfied, and some difficulty occurred in
" effecting a settlement with his broker. Mr. Hooker,
" of the firm of Hooker & Co., was applied to and coun-
" seled with by the defendant in securing a settlement;
" and Hooker being an old friend of the defendant, ad-
" vised him that if he wished to speculate or deal any
" more on the board of trade he had better do it with his,
" Hooker's, firm. The defendant consented to this, pro-
" vided he could only trade or deal in differences; that is,
" Hooker's firm was not to take in or carry any com-
" modities bought, or defendant was to pay or receive
" the differences between the selling and buying or buy-
" ing and selling prices of the commodities dealt in. In
" pursuance of this arrangement, the defendant from time
" to time gave order to Hooker & Co. to buy and sell
" commodities on the board of trade for his account, and
" they executed these orders by buying or selling, as
" directed, on the board in the usual form of such trans-
" actions, where the seller had the option to deliver
" within a certain time. * * * The only option in the
" transaction being as to the time within which the seller
" was allowed to make delivery. These dealings continued
" until some time in May or June, 1876, Hooker & Co.
" buying or selling grain, pork or lard, as directed by de-
" fendant, and settling the differences, paying the money
" when the market was against the defendant, and re-
" ceiving it for him when the market was in his favor,
" charging to him whatever sums were paid in settling
" the differences when they were against them, and giv-

"ing him credit when they received differences in his "favor. It two or three transactions the firm seem to "have taken in and paid for grain and provisions bought "for the defendant and held them for a short time, and "then sold them, charging the defendant with the in- "terest, storage, etc., incident to such transaction. The "defendant was also debited on the books of the firm "with commissions for transacting the business, and with "divers sums of money paid him from time to time, so "that at the time the dealings of the firm for the de- "fendant closed he stood debited to them on the books in "the sum of $22,000. In payment of this indebtedness "the defendant transferred and delivered to Hooker & "Co. four notes of $5,000 each, held by him against the "Couch estate, the payment of which notes he guar- "anteed, and two of which are the notes in question, and "the firm of Hooker & Co. transferred the two notes "now before the court with the defendant's guaranty of "payment thereon to the Third National Bank of Chi- "cago, to secure their own indebtedness to the bank for "money borrowed. The testimony in this case fully "satisfies me that Mr. Hooker, when he assumed "for his firm to act as the defendant's broker in "his dealings on the board of trade, did not con- "template or intend to make any different trans- "action for the defendant than for his other customers. "He undoubtedly intended to make purchases or sales "where the buyer had an option as to the time within "which to make delivery, and he intended to so conduct "the defendant's transactions as to avoid taking and pay- "ing for any article bought. He seems to have ex- "plained to the defendant how by reason of his many "customers, some of whom were sellers and others

"buyers on the market, he could so manage the defend-
"ant's dealings that he need not take any commodity
"bought, but could settle simply the difference between
"the purchase price and the market price when the
"seller had the right to deliver. Hooker did not, I am
"satisfied from the proof, intend to deal in options to buy or
"sell at a future time, such as are prohibited by the Illinois
"statutes (Revised Statutes of Illinois, chapter 38, section
"130), but intended, as I have said, to deal in contracts
"and to settle the differences so as to avoid paying for and
"carrying the commodities bought. I am also satisfied
"that while the defendant may have known but little
"when he commenced with this firm as to the mode in
"which the business was to be transacted by them for
"him, yet he did not contemplate dealing in puts and
"calls or options to buy and sell at a future time, and
"that he was very soon aware of the forms and modes in
"which the business was done for him by the firm. He
"intended without doubt, that his brokers should so man-
"age his trades that the differences should be paid or
"collected instead of his taking and holding the article
"dealt in or having his broker do it for him and at
"his expense. He may have contemplated dealing wholly
"in differences to such an extent as to make the transac-
"tions such as have been construed by the courts of this
"state to be wager contracts or gambling contracts at
"common law, but he did not, I am satisfied, intend that
"his brokers should make for him such contracts as are
"expressly made illegal by the Illinois statute, but at
"most they were to be transactions where it was not in-
"tended that any commodity should be actually received
"or delivered, that he was to deal in differences. * *
"* Assuming then that the defendant by his agreement

"with Hooker & Co. intended to deal only in differences "and that the bulk of the debit against him on the books "of the firm accrued for differences paid by the firm on "trades made for him in pursuance of this agreement, "the only question is, do these facts so taint this paper "as to make this guaranty of payment void in the hands "of this bank? There is no dispute but that the bank is "a *bona fide* holder of the notes with defendant's guar- "anty thereon, taken for value before due and without "notice of any defense. The statute of Illinois makes "notes and other securities given in payment of gamb- "ling contracts to sell or buy grain or other commodities "at a future time void in the hands of any assignee or "holders but the contracts out of which this indebtedness "between Hooker & Co. and the defendants were not "options to sell or buy at a future time, but were con- "tracts of sale in which the seller was bound to deliver "at a future time within certain limits. They were not "therefore gambling contracts within the Illinois statute. "They may have been, as I have already said, gambling "or wager contracts at common law to such an extent as "that Hooker & Co. had sued the defendant, he could "have successfully defended. * * * It seems to me "to follow then as a necessary conclusion that the de- "fendant having delivered these notes with his guaranty "upon them to Hooker & Co. in settlement of their de- "mands against him, even though their demand was "tainted as gambling contract at common law, he cannot "be heard to set up the illegality of the dealings between "himself and Hooker & Co. as a defense to these guar- "anties in the hands of a *bona fide* holder, etc."

The foregoing extracts from the decision bring out the ground of the decision. It is true that the judge in other

parts argues, or rather we might say, expresses a doubt whether Foote in that case could have defended even if the suit had been brought in the name of Hooker & Co., but that cuts no figure. The basis of the decision set up in the plea, as has been seen, was and is that as the Third National Bank was *bona fide* holder of the notes in controversy, the court taking the view that the transactions on account of which the notes were transferred by Foote to Hooker & Co., were gambling transactions, but nevertheless not within the special prohibition of section 130; chapter 38 of the Revised Statutes of Illinois, and therefore not within section 136 of the same chapter, the Third National Bank should be protected as an innocent holder for value. Upon this basis alone then a judgment for $14,635.55 was according to this plea entered against the defendant, Ira Foote, upon his guaranty of said notes. Connected with this plea is an answer denying the agreement as set up in Rice's cross-bill and denying that the four notes described in the cross-bill were turned out in settlement of an account for differences, and averring that all the transactions between S. G. Hooker & Co. and Foote were valid and *bona fide* and sanctioned by the rules of the board of trade, and by the laws of the State of Illinois; and averring that said account in settlement of which said notes were transferred showed a large balance of indebtedness from Foote to Hooker & Co., for losses incurred and moneys paid out on account of said Foote for commissions and services, for divers sums of money and interest paid to said Foote from time to time for insurance premiums and expenses in storing goods and for other causes, and that a compromise was made in the settlement, and the amount due agreed upon, and that Foote gave his note to Hooker &

Co. for that amount, and afterwards paid that note by paying a small amount in cash and transferring the four notes in question to Hooker & Co. The answer denies that the said bank received the notes, with any knowledge on the part of the bank that said notes were transferred on account of any illegal or gambling debt, and avers that said notes were taken in good faith as collateral security for money loaned and justly due to said bank. The answer admits that after the transfer of said notes, Hooker & Co. made a voluntary assignment to J. Irving Pearce for the benefit of their creditors, and it is claimed in said answer that after the balance due on the debt of Hooker & Co. has been paid out of the judgment of the bank, the balance of the judgment, so far as recovered should go to said J. Irving Pearce, as assignee of Hooker & Co. The answer further denies that Foote transferred or assigned any interest in said notes to the plaintiff in the cross-bill, and denies that complainant in the cross-bill is a *bona fide* owner of said notes, and avers that if such an assignment has been made, that it was made without consideration and in violation and contempt of an injunction issued upon said original bill, and for the purpose of hindering, delaying and defrauding the creditors of said Foote, and that said transfer was void and had no effect. The answer also denies that said Foote has had any interest in said notes since he transferred the same to Hooker & Co., and denies that the original transaction between Hooker & Co. and Ira Foote was in the nature of a wager or bet on the prices of grain and provisions, and denies that it was in the nature of an option contract prohibited by chapter 38, section 130 of the general statutes of Illinois, and denies that said Rice had any interest

in said judgment recovered by said Third National Bank against said Foote or in said notes. Answer also states that the said bank was paid by J. Irving Pearce, as assignee, $1,570.45, and that Pearce, in his cross-bill, claims that the bank, after collecting the judgment against Foote, should refund the same to the said Pearce, and that should the bank be required to refund the same to said Pearce, that then there was due to the bank, on the 25th of May, 1885, $11,220.25.

Issues were joined by replications to the several answers, and the questions which were litigated, upon which the case turned below and must turn here, were:

First. Whether the judgment against Foote in the suit between the Third National Bank and said Foote on Foote's guaranty of the two notes transferred to the Third National Bank as collateral security to Hooker & Co.'s note was a *res adjudicata* as against Foote and his assignee in favor of S. G. Hooker & Co., and their assignee, J. Irving Pearce; and

Secondly. If that judgment is not a *res adjudicata*, whether the transactions between S. G. Hooker & Co. and said Foote, on account of which Foote transferred to S. G. Hooker & Co. the two notes in question, and made the guaranty on which said judgment was obtained, were gambling transactions, so that under the laws of the State of Illinois, said Foote or his assignee, had a right to recover back said notes from S. G. Hooker & Co. or their assignee.

The evidence taken on the trial is very full, and on it the court below found the transactions between S. G. Hooker & Co. and Foote on account of which said notes were transferred as already stated, were gambling trans-

actions, and also found that said judgment in favor of the Third National Bank and against said Foote, and the suit in which said judgment was obtained, were not estoppel against Foote or his assignee. The court decreed to defendant Rice, assignee of Foote, the said notes upon payment to the Third National Bank of the entire amount of their claim. There was no contention in the court below, and no question here about the rights of the parties or any of them in relation to any other matters not appearing in the pleadings of the case. The whole controversy is narrowed down to the effect of the plea of said former recovery, and to the question of the right of Rice, as assignee of Foote to recover said two notes from J. Irving Pearce as the assignee of S. G. Hooker & Co., upon payment of the amount due to the bank. It is true that Rice in his cross bill sought to recover those notes without the payment of said amount, the amount due to the bank but he does not feel disposed to question the equity of the decree, so that it is entirely true that there are only two questions as already stated in this case. The decree of the court below is in substance as follows:

It found first that the complainant in the original bill was entitled to be paid upon the judgment against Ira Foote set forth in the bill the balance due upon the note of S. G. Hooker & Co., referred to in the cross-bill of J. Irving Pearce, after crediting upon said note all payments made thereon including the payment made by J. Irving Pearce as assignee of said S. G. Hooker & Co., which sum was admitted to be $8,459.

Second. The cross-bill of J. Irving Pearce was dismissed for want of equity at his cost.

Third. It was found that James H. Rice is the equit-

able owner of the two notes of $5,000 each, executed by the trustees of the Couch estate, and dated July 1, 1886, and that the consideration of the transfer of said notes by J. Irving Pearce to the firm of S. G. Hooker & Co., was a gambling consideration and that the assignment was void as between said Foote and his assignees for value and said S. G. Hooker & Co., and their voluntary assignee and the said assignment from Foote to S. G. Hooker & Co., was set aside as between said parties and it was ordered that upon the payment by said Rice to said bank of the amount due said bank upon said indebtedness of said Hooker & Co. to said bank, the said Rice be entitled to have the delivery of the said notes to him together with the assignment of the judgment of said bank against said Foote, said judgment to be satisfied of record by said Rice upon the collection by him of said Couch estate notes, or enough thereon to satisfy the amount to be paid by him to said bank, together with his costs and expenses, and that, upon payment of said amount to said bank by said Rice within thirty days from the date of the decree, the said bank should deliver said notes to said Rice, together with an assignment duly executed of said judgment against said Foote, and that said James H. Rice, the complainant in the cross-bill, recover his costs upon his said cross-bill. From this decree, J. Irving Pearce, as assignee of S. G. Hooker & Co., prayed an appeal to the Supreme court of the United States, which was allowed.

STATEMENT OF FACTS

Ira Foote came to Chicago in 1854, and followed the business of carpenter and builder, in partnership with James H. Rice, until about 1874. He never pursued any other business. (Rec., 73.)

In 1874 he commenced speculating upon the Chicago Board of Trade, through a Mr. Adams, a commission merchant. He did not want any article delivered to him, nor did he want to deliver anything that he sold, and having a little trouble with Mr. Adams in this respect, he quit trading with him after one or two transactions, and went to the commission house of S. G. Hooker & Co., who became his commission merchants. (Rec., 75–76.)

Mr. Foote had known Samuel G. Hooker, the senior member of the firm, for many years as a builder. Mr. Hooker had but recently left that occupation to embark in the speculative business upon the Chicago Board of Trade, a portion of the time in partnership with one George D. Lincoln, under the firm name of S. G. Hooker & Co. (Rec., 74.) Mr. Foote told Mr. Hooker that he did not want to buy any grain. That he had no money to buy grain with. Hooker then informed Mr. Foote that he had some large deals for parties in Canada and in Troy and Buffalo, New York, and that he (Hooker) would buy grain for Mr. Foote, and then go on the Board of Trade with his large orders and run up the price so as to make money for Mr. Foote very rapidly. (Rec., 76–7.)

This conversation was in the presence of George A. Hook.

The testimony of Mr. Foote, Mr. Hooker, (Rec., 100), and Mr. Hook, (Rec., 134–5), substantially agree as to what the contract was, and no one disputes it. It was distinctly agreed that no grain should be delivered, and the speculation should be conducted on the basis of the rise and fall in the market. Pursuant to that arrangement, and not otherwise, S. G. Hooker & Co., commenced a system of speculating on the Board of Trade for Mr. Foote, and continued it until June, 1876.

Mr. Foote gave no orders and the deal was managed and run by Stephen G. Hooker, and if Mr. Foote made any money, it was credited to him as a difference arising out of the article purchased or sold. If it was a loss, he was charged with the difference in the article bought or sold. (Rec., 79, 80.)

The entire amount of trading cannot be ascertained. We have however, a copy of S. G. Hooker & Co.'s option book, which appears on pages 409 to 436 of the record, and it shows 340,000 bushels of wheat bought or sold, 590,000 bushels of corn, 300,000 bushels of oats, 1,280,000 pounds of lard and 1,000 barrels of pork. The aggregate value of which is about $1,000,000.

On May 27, 1875, Mr. Foote had lost $12,743.50 including a little money that he had drawn. (Rec., 92.) For this amount he gave his note. On June 29, 1876, Mr. Foote owed S. G. Hooker & Co. as per their account, including the note just above mentioned, $22,165.72 as per their statement. (Rec., 147, 148.)

Prior to this time Ira Foote and James H. Rice, as copartners, had erected the Tremont House, Commercial hotel, and other buildings for the estate Ira Couch deceased, in the city of Chicago, and Ira Foote, received from said estate, among other things, four notes of five

thousand dollars ($5,000) each, two of which are in controversy in this cause, and were in the words and figures following: (Rec., 148.)

"$5,000.

"On the first day of July, A. D. 1877, the estate of "Ira Couch, deceased, promise to pay to the order of Ira "Foote, at their office in Chicago, Illinois, five thousand "dollars, with interest at eight per cent. per annum, for "value received.

553 Dated CHICAGO, July 1, 1876.

"WM. H. WOOD,
"CAROLINE E. COUCH,
"JAMES COUCH,
"*Trustees of Estate of Ira Couch, etc.*"

"I hereby guarantee the payment of the within note, "for value received, at maturity.

"IRA FOOTE,
"By J. H. RICE,
"*Attorney in fact.*"

"$5,000. On the first day of October, A. D. 1877, the "estate of Ira Couch, deceased, promise to pay the order "of Ira Foote, five thousand dollars, with interest at the "rate of eight per cent. per annum, for value received.

Dated CHICAGO, July 1, 1876.

"WM. H. WOOD,
"CAROLINE E. COUCH,
"JAMES COUCH,
"*Trustees of Estate of Ira Couch, etc.*

"I hereby guarantee the payment of the within note "for value received, at maturity.

"IRA FOOTE,
"By J. H. RICE,
"*Attorney in fact.*"

Mr. Rice held a power of attorney from Mr. Foote, and effected a settlement with S. G. Hooker & Co, for this supposed balance of $22,165.72, while Mr. Foote was absent and sick in the state of New York. To settle the account, Mr. Rice gave to S. G. Hooker & Co. the four (4) notes for five thousand dollars ($5,000) each, two of which are copied above, and in the name of Mr. Foote. guaranteed their payment on the back of each one, and at the same time gave his check for $2,165.72, and thereby settled the account. The check was as follews: (Rec., 148.)

Plate and Window Glass.

No. 1892. CHICAGO, June 29, 1876.

UNION TRUST COMPANY,

Pay to MESS. S. G. HOOKER & CO., *or order*

Twenty-one Hundred sixty-five and $\frac{72}{100}$ *Dollars.*

$2,165.\frac{72}{100}$ | Copy. | JAMES H. RICE.

Endorsed as follows:

"Pay to J. B. Norton or order.

"S. G. HOOKER & Co.

"J. B. NORTON."

On December 30, 1876, S. G. Hooker & Co. were indebted to the Third National Bank of Chicago in the sum of $13,912.97, for an overdraft, and that day executed a note as follows (Rec., 405):

"$13,912.97. CHICAGO, Dec. 30, 1876.

"Ninety days after date I promise to pay the Third "National Bank of Chicago, or order, at their office $13,- "912.97 for value recd., with interest at the rate of 10 per.

"cent. per annum, we having deposited with them as col-
"lateral security for the payment thereof: 1 note of even
"date for $3,000 secured by mtg. on elevator at Grin-
"nell, Ia.; 6 notes signed by Alberger; 2 notes signed by
"F. Bishop; 2 notes signed by Vinden; ninety trc. of
"hams; 2 notes signed by Couch estate trustees.

"S. G. HOOKER & Co.,
"in settlement of old firm acct.

"Small note and mortgage delivered up 2–28."

(On the back of the note appears the following endorsement):

"July 9, 1877, $130.50, paid as interest on this note
"(Alberger note).

"We guarantee the collection of this note.

"G. D. LINCOLN.
"S. G. HOOKER.

"$1,121, paid January 18, '77, proceeds of 60 tierces of
"hams.
"$1,024.83, 2–8 Bishop.
"$1,024.83, 2–23 "
"$86.33, 2–23 Alberger int.
"$737, 2–24 Lard.
"$3,224.86, 2–28 Grinnell.
"$126.53, 9–8 Alberger.
"$1,721.16, 5–13–78 Vinden's note.
"$1,570.45 5–12–79. 30 per ct. dividend paid by cer-
"tificates of deposit."

This note, as will be observed, was secured by various collaterals, including the two (2) notes hereinbefore set out. One of the other Couch estate notes was given to Henry M. Tenney, an attorney, as a retainer, in the impending troubles of S. G. Hooker & Co., who were in failing circumstances.

This statement of facts is sustained by the following testimony:

Upon the question of fact as to the origin of the pretended indebtedness from Ira Foote to S. G. Hooker & Company, the testimony abstracted is as follows:

Ira Foote testified as follows (Rec., 73, 154):

"I am sixty-nine years of age and have resided in "Chicago since 1854; have been a builder until about "ten years ago; for the past ten years have been out of "business. I am a carpenter by trade, and did wood "work. Have been a carpenter since I was eighteen "years of age. Have not been engaged in any other "business. I have known S. G. Hooker since 1853. "He was also formerly a builder. Mr. Hooker came to "Chicago in 1854. He was for a time engaged with "me in building in the city of Chicago. Since then he "has been in the board of trade business. I have known "George D. Lincoln since 1874. He was a partner of "S. G. Hooker in the board of trade business under the "firm name of S. G. Hooker and Company. Mr. "Hooker introduced Mr Lincoln to me as his partner. "I have known James H. Rice for forty years and was "engaged in business with him for twenty-five years, "in building in Chicago. I know George A. Hook I "knew him in 1874 and 1875. He was time keeper and "pay-master for Mr. Rice and myself. Mr. Rice and "I built the Tremont House in Chicago Mr. "Hook was in our employ when we commenced "it. Afterwards Mr. Hook went to work for "Mr. Couch at the Tremont house. I speculated a little "with a man by the name of George Adams in 1874. "and that was my first experience on the Chicago Board

"of Trade. After I got through with Mr. Adams, I "speculated with Mr. Hooker. Mr. Adams had bought "some oats for me. There was about $3,000 in my "favor, and I wanted him to sell the oats and he wouldn't. "I gave Mr. Adams two thousand or twenty-five hun- "dred dollars as margins. I went to Mr. Hooker be- "cause I knew him and asked him if he wouldn't go to "Mr. Adams and settle up the matter. Mr. Adams paid "me back the check which I gave him for margins, and "the next day came to me with a statement of so much "storage, so much for handling the oats; there was $900 "in my favor, and Mr. Adams gave me his check for it. "After that I dealt with Mr. Hooker and Mr. Lincoln, "under the firm name of S. G. Hooker & Co. I did not "know Mr. Lincoln. I had a talk with Mr. Hooker. "Mr. Hooker said to me that he was dealing pretty "largely on the Board of Trade, and that he would spec- "ulate for me. I said I thought that I would not specu- "late any more. I had enough with Mr. Adams. He "drew on me for money, and I made up my mind I "wouldn't deal any more. Mr. Hooker said he could "make me some money. Well, I said, I would "like to make money, 'but I don't want any more "trading, as I traded with Mr. Adams.' I told Mr. Hooker "I would not put up margins; that I did not want any "grain. I wouldn't buy any grain. 'I haven't any "money to go into the grain business, but if you can "speculate for me and make some money I would like to "have you do it.' Mr. Hooker said that he had large "deals for some people in Canada, Troy and Buffalo, "New York, and sometimes they gave him large orders "to buy; then he said 'if the market is right I will buy "for you first, then go on with these large orders and

"raise the market, and I can sell them right out and "make you some money.' 'Well,' I said, 'remember I "am to put up no margins. I don't want any grain; I "wouldn't have any. I have no money to buy grain "with; but if I could speculate a little and make some "money I would be very glad to do it.' The under- "standing was there was to be no grain delivered. Mr. "Hooker said he would buy this month for next month, "and if the market didn't go to suit him he would change "it off to another month. I told Mr. Hooker I would "not have any grain delivered; would not buy any grain, "and Mr. Hooker never told me that he had bought "any for me. If I lost, I was to pay the loss, and if I "won anything Hooker & Co. were to pay it to me. "That is all that was said. Of course I thought that "would be right. Mr. George A. Hook was "present at this conversation at the Tremont House. "I never gave any orders to S. G. Hooker & Company "to buy or sell anything. They were to speculate for "for me. They were to buy no grain for me and none "was to be delivered. I mean by grain, provisions, lard "or pork, wheat, oats or grain. Mr. Hooker said he "had a large contract for grain and for lard, but I don't "remember how much. No delivery whatever was to "be made for me or for my account. Hr. Hooker was "to go into the market and make some money for me "on the fluctuations of the market. I told Mr. Hooker "that I would not have any cash grain. No delivery at "all. Would not deal in cash grain at all; that I would "speculate in what they called options from one month to "the other. That before the trade ran out, if it did not "suit, they were to change it over. I was to pay the dif- "ference or they pay the difference to me. I didn't know

"anything about the rules of the board of trade. I never "had been in the grain business, except as I stated. Never "had been on the board of trade. This conversation was "in 1874. I had never done any business before through "S. G. Hooker & Co. Mr. Hooker used to come to the "Tremont House mostly every day and take his lunch. I "gave no orders of any kind. I know nothing about "$400 being charged to me on 115,000 bushels of wheat, "nor about $75 being charged to me on 5,000 bushels of "wheat."

The witness continuing, states that he knows nothing about the details in the items of the account.

Stephen G. Hooker testified as follows (Rec., 112-234):

"Have resided in Chicago for thirty-six years. Pre- "vious to that resided in Buffalo, New York. Have been "in business on the Chicago Board of Trade since 1856. "Was in partnership with George D. Lincoln in 1872 up "to 1876, or 1877. I knew Mr. Ira Foote in 1849. He was "a builder by trade. Mr. Foote came to me one morning "and said that he had been speculating through Mr. Adams "on the Board of Trade. This was in 1873 or 1874, "and that Mr. Adams had been carrying large amounts "of cash oats unknown to him and without his consent "and had charged him with a large account for carrying "it, and said he was very much dissatisfied with the man- "agement of the property and of the expense that had "been shown to him of carrying this property, cash in- "terest, storage and insurance and wanted me "to go to Mr Adams and settle the matter "up and I did so. Afterwards I met Mr. Foote at "the Tremont House; perhaps a month afterward. Mr.

"George A. Hook was present. Mr. Foote was talking "about speculating on the board of trade. I was dealing "largely in corn for Canada parties and I told Mr. Foote "about it. Mr. Foote said he wanted to make more "money trading on 'change and wanted to do it through me. "He said Mr. Adams was boarding at the Tremont House, "and he had traded through him. I told Mr. Foote that he "had no business to trade on change; that he didn't "know anything about it. Mr. Foote says he was bound "to make some money, and I told him to trade with "somebody he knew. Mr. Foote said he wanted to "trade without carrying any property; wanted to deal "exclusively in options, and that he didn't want to pay "for anything. Said I, 'Mr. Foote, seven-eighths of all "the business done on the Board of Trade is in options. "We never design to take any property as a rule. That "is not the design of speculative trades on change. The "design is to run out options and make a profit or loss "during the life of the contract.' Said I: 'We can do "that if you want to, but my advice is to keep away "from the Board of Trade. You don't understand it; it "takes a good deal of management to make money "there.' Said he, 'You are trading, and you can join "my purchase with your Canada parties and make me "some money.' I told him I would do the best I could "for him, and then and there promised him that I would "trade for him exclusively in options, without any inten-"tion of violating the law; but as it was the uniform "custom, I made that agreement. I mean by options "that I would buy ten or twenty thousand bushels of "corn for December, January and February, and before "the contract matured I would sell that property "out to the best advantage. Charge it to him

"debit or credit. Charge him the loss or credit him the "the profit. I called it a profit or loss on an option "transaction. I charged it in differences. If we sold "the corn at two cents a bushel lower than we bought it, "it was a difference—a loss.

"If we sold it at one cent higher than the price we "bought, it was a profit—difference of a profit between "the purchase and the sale. It was implicitly understood "between Mr. Foote and myself that no property should "be taken in and paid for and carrying expenses charged. "We were to sell all property purchased before the ma- "turity of the contract and buy all property sold before "the maturity of the contract. Purchases and sales were "to be made before the contract matured. I made this "arrangement with Mr. Foote because I knew he did not "have money to carry on this trading. He had no money "outside of his business to carry any property, and he "had just enough experience to learn that it was no way "to do so, so that he wanted to trade exclusively in op- "tions. I don't think Mr. Foote had any experience trad- "ing on the board, except what he had learned from Mr. "Adams and what I told him. Don't think he knew about "it, any more than a child. I have always been associated "with Mr. Foote intimately ever since he came west. He "lived in my family for seven years, and I knew him "pretty well. I never did any board of trade "business for Mr. Foote previous to this agreement. I "did the buying and selling for Mr. Foote myself. Dur- "ing this time we were trading for Mr. Foote, we "(meaning S. G. Hooker & Co.) owned all the corn in "Chicago for Canada parties, 650,000 bushels in the "month of October. We carried all of that corn as cash. "The item of $23,755.92 appearing in Mr. Foote's ac-

"count as of May 1, 1875, as having been paid for $30,-
"000 bushels of corn, was made up from grain that we
"were carrying for other parties. Mr. Lincoln and Mr.
"Norton found that Mr. Foote was largely indebted to
"us, and they began to trump up artificial charges against
"Mr. Foote to run up the account against him. That is
"one of the items. My impression is that corn was for
"Horace Alwin of Port Hope, Canada. We were at
"the same time dealing in corn for several other parties.
"We had all the corn in Chicago. That 30,000 bushels
"of corn was not paid for by Mr. Foote. The item of
"$12,600.62 as appearing in Mr. Foote's account as hav-
"ing been paid on June 1, 1875, for 250 tierces of lard,
"arose in this way: We had a large amount of lard for
"the same man, Alwin, at one time as high as 56,000
"tierces carrying for him, and I found that Jim (mean-
"ing Mr. Norton, the book-keeper,) was charging up
"old man Foote with the property, and I spoke to him
"about it—the property we were carrying for another
"man. I talked with Jim about it, and he said 'Mr.
"Lincoln tells me to do so.' Said I, 'It is all wrong;
"we had no instructions to carry any property for Foote,
"and it was all wrong, charging him with carrying
"charges for another man's property.' All the rest of
"the charges appear as differences. None of the trades
"arrived at maturity. There was no intention on my
"part of any delivery upon any of the purchases or sales
"made for the account of Ira Foote and the carrying
"charges that appear in the account were entered
"against him wrongfully."

George A. Hook testified as follows (Rec., 132–269):
"I am a deputy sheriff. Have been since 1882. I am
"acquainted with Ira Foote. Have known him for fif-

"teen years. I was in the firm with him three or four "years, when he was with Mr. Rice before the Chicago "fire. I have known Stephen G. Hooker about ten or "twelve years. He used to be a contractor-carpenter at "one time. Afterwards he was in the commission busi- "ness on the board of trade. The firm was S. G. "Hooker & Co. A man by the name of Lincoln was "his partner. I was the time-keeper and paymaster for "Foote & Rice during the building season after the Chi- "cago fire. In the fall of 1874 I was at the Tremont "House. Mr. Foote boarded there and I saw him every "day; one-half dozen times a day. I knew of Mr. "Foote's having speculations with George W. Adams. I "heard a conversation between Mr. Foote and Mr. "Hooker at the Tremont House in relation to the trans- "action that Mr. Foote had with Mr. Adams. Mr. "Adams and Mr. Foote had some misunderstanding and "Mr. Hooker was sent for, to settle it up. Mr. Hooker "told Mr. Foote at that time that if he wanted to do any "dealing to let him do it, as he had known him for years. "Mr. Hooker said: 'Whatever I do with you, you will "know it is done right. Let me do your dealing for you on "the Board of Trade. I am having large deals for "Canada people and when I have a large order, I could "put you in ahead of the rest of them and make you "some money.' Mr. Foote agreed that he should go on "and do business with him and he told him he couldn't "draw any money out of the firm. He wanted what "dealing he done to be done quickly. He wanted it op- "tion dealing. If anything was coming to him, he wanted "it, and if it went the other way, to settle it up then. "Mr. Foote said he couldn't draw any money. He didn't "want any cash grain bought, but any differences there

" might be at the end of the option deals, he would set-
" tle it, if it was against him, or if for him, he wanted it.
" Mr. Foote did not want any actual grain bought or de-
" livered; only option deals. No grain was to be paid
" for, and they were not to have any grain, but they were
" to settle the difference, as they called it. If they
" bought grain one month for the next month, it should
" be closed out before the thirty or sixty days; settled
" before the maturity of the contract. He, Hooker, said
" to Mr. Foote, that is the way he would take his busi-
" ness. The question came up how to settle the deals
" and he said they formed what they called a
" ring—twenty or thirty got together and changed
" off from one to another and closed out the
" deals; no actual grain was delivered, nor any provisions.
" Mr. Hooker said he was making big deals for Canada
" people. One of the largest deals in the business in
" lard, and I think corn. Mr. Hooker said he would put
" Mr. Foote's deals in ahead of the Canada parties and
" go and buy Mr. Foote's options before he put in his
" large orders he got from Canada, and that the large
" orders from Canada would force the market. I didn't
" hear anything said about margins. Mr. Hooker and
" Mr. Foote used to meet almost every day at the Tre-
" mont House in my presence. Mr. Foote always came
" into the wine room to get a drink before he went to
" dinner, and I had charge of the wine department at
" that time."

In addition to the testimony from the mouths of the only witnesses who knew about the contract—the accounts rendered (Record, 391–5) by Hooker & Co to Foote, show him charged and credited with "differences." The option book of Hooker [Record, 409 to 436] shows nearly

all the trades made to have been in even 5,000 bushel lots, and nearly all to have been marked "settled" before the delivery month arrived, and many of them "rung up" or settled on the same day the sale or purchase was made, and Foote charged with the difference; thus carrying out quite generally the original contract between Hooker and Foote made at the Tremont House in 1875, about which the witnesses Foote, Hooker and Hook testify.

The cross-examination of Lincoln [Rec., 180] Morton [Rec., 252] and Gutmacher [Rec., 350] show almost conclusively that no design or intent ever existed of receiving or delivering a bushel of grain or a pound of pork or lard. That it was a mere speculation on the ups and downs of the market. That the purchases and sales were "rung up," or "settled" in most instances long before the maturity of any pretended contract; that Hooker gave the orders and Foote was the dupe.

The facts appear so clearly in Judge Scott's opinion in *Pearce* v. *Foote* in the 113 Illinois, page 228, that we will not take further time to recapitulate them here.

The assignment made by Ira Foote to James H. Rice was as follows (Rec., 408):

"For value received, I hereby sell, assign, transfer and "set over unto James H. Rice, of Chicago, Illinois all my "right, title, interest, claim and demand in and under "two (2) certain notes executed by the trustees of Ira "Couch's estate, to my order, each of said notes being "the sum of five thousand dollars ($5,000), and are "dated the 1st day of July, 1876, and are now in the "hands of Huntington W. Jackson, receiver of the Third "National Bank of Chicago; said notes being held by "said Jackson, receiver as aforesaid, as collateral security

" for a certain indebtedness due said Third National
" Bank from S. G. Hooker & Company.

" I hereay give Rice full power and authority to prose-
" cute, in my name or his own, any and all suits touching
" said notes in any manner that he may deem best.

" Witness my hand and seal, at Chicago, this 16th day
" of February, 1885.

" IRA FOOTE."

ARGUMENT.

The appellant, in this case in his assignment of errors, alleges nine points of error.

We do not care to waste the time of this court in discussing these in numerical order. In our opinion they are all comprised in the following propositions:

First. Whether the judgment against Foote in the suit between the Third National Bank and the said Foote, on Foote's guaranty of the two notes transferred to the Third National Bank as collateral security to Hooker & Co.'s note, was a *res adjudicata* as against Foote and his assignee, in favor of S. G. Hooker & Co. and their assignee, J. Irving Pearce, for the surplus of these notes after paying the bank in full.

Second. If that judgment is not *res adjudicata*, whether the transaction between S. G. Hooker & Co. and said Foote on account of which Foote transferred to S. G. Hooker & Co. the two notes in question, and made the grantee on which said judgment was obtained, were gambling transactions, so that under the laws of the State of Illinois the assignment by Foote to Hooker & Co. of these notes was void.

Third. If the consideration for the transfer and guaranty of these notes was a gambling transaction, then Hooker & Co. or their assignee, Pearce, have no title to said notes, and they belong to Foote or his assignee for value.

The first proposition must be answered in the negative. The claimants to the fund in dispute are appellant and appellee. The lien on the bank on so much of it as was

the amount of the judgment was discharged by the appellee paying the bank that amount. The point made that Foote had no right to assign these notes to Rice after Jenkins was appointed receiver by the court is fully answered by the fact, that the appointment of Jenkins in no way affected the title to this property.

He was simply appointed to hold the property until the right of the parties to the suit to the same was determined. The court could give him no other power over it, and no power over any more of it than was sufficient to satisfy the judgment of the bank, to wit: $8,459. Hence, as the title to the property was not vested in Jenkins, by virtue of his appointment, Foote had a right to convey his interest therein to appellee. (Kerr Recv., 170–171.)

Coming now to claim of the bank to this fund—its right to $8,459 to satisfy its judgment against Foote was established by the decree in this case. Its right to this amount came through Hooker & Co.—appellants' assignors—and was established against Foote because of the principle that it was an innocent holder of same for value before, maturity and was not precluded from recovery because of equities, etc., between the original parties to the transaction. In its suit against Foote, Foote pleaded that the contract out of which it grew was a gambling transaction. The court held that no defense and rendered judgment in the bank's favor. This judgment was rendered because the bank was an innocent holder for value. If Foote or his assignee, Rice, choose to pay the amount of this judgment and thereby become subrogated to the bank's rights to it appellant cannot complain. He could not dispute the bank's right to its judgment and

did not. The cause of action adjudicated in the case of the bank was a very different cause of action from the cause of action between appellant and appellee here. In that case the question was as to the rights of an innocent holder for value. The law wherever *adjudicata* is pleaded in such cases is as follows:

"A plea in law must not only show that the same "question was tried but that the same cause of action was "adjudicated between the same parties."

Eastman v. *Cooper*, 15 Pick, 276.
Town v. *Nims*, 5 N. H., 258.

"To render a judgment conclusive it must appear by "the record of the prior suit that the particular matter "sought to be concluded was necessarily tried or deter-"mined—that is that the verdict in the suit could not "have been rendered without deciding the matter."

Russell v. *Place*, 94 U. S., 608.
Cromwell v. *County of Sac*, 94 U. S., 351.

4. Judge Blodgett, in his opinion (Printed Rec., 64), says, the defense of gambling could not be set up against a *bona fide* holder of the guaranty. That he was not determining the rights of Hooker & Co. and Foote to these notes is evident from the statement in his opinion (Rec., 364); that he was *doubtful* if Hooker & Co. had sued Foote on this guaranty he could have defended.

Moreover, the bank in that suit was only litigating the amount due it from Hooker & Co.

This has been shown to be much less than amount of the notes. This amount was finally found to be only $8,459. The real contest in this case is for the surplus, not the amount due the bank. How then can it be

claimed that the rights of the parties to this surplus in this suit were determined in the former suit?

Privity is defined as "Mutual or successive relation-"ships to same rights of property."

Green. on Ev., Sec. 189.

Did appellant here and the bank have any such relationship to the surplus that was determined in that suit, so as to make them privies? Not at all. The bank had no right to this surplus. When its right was determined in this case its lien or judgment was not for the surplus; it made no claim to it; so it seems absurd to claim any privity between the bank or its agent, and appellant here. Hooker & Co. never assigned the bank the surplus at all. Hence that suit is no estoppel in this case, because it is not in reference to same cause of action, or same subject-matter, nor is it between the same parties or their privies.

The following law is well established:

"Party holding note as collateral can only recover "amount of his debt."

Byle's Bills, Sec. 77.
Edward Bills, Sec. 319.
Danl. Neg. Inst., Sec. 832.
Worcester Natl. Bank v. *Cheney*, 87 Ill., 602.
Allaire v. *Harthshorne*, 21 N. J., 665.

"Party is only *bona fide* holder to the extent of his in-"terest when he acquires title."

Bank v. *Hemingway*, 34 Ohio St., 381.

"Note given as collateral security holder, if there is a

"defense on the merits, is only protected to the extent "of his advances."

Danl. Neg. Inst., Sec. 832 *a*.
Garrison v. *Huse*, 9 Brad., 562.

Even if bank held judgment for full amount it held the surplus as trustee for the lawful owner thereof.

Danl. Neg. Inst., 832 *a*.
Tooke v. *Newman*, 75 Ill., 215.

The decree is not erroneous in directing Rice to be subrogated to bank's rights to these notes. They were pledged in fraud of his rights to the extent of the surplus beyond bank's lien. If it be true, as found by the decree in this case, that appellant or his assignors had no lawful title to these notes, then Hooker & Co. had no right to pledge them at all; but, as the bank, to the extent of its claim against Hooker, was an innocent holder for value—its claim was valid to that extent—hence, Rice, as assignee of Foote, became entitled to redeem these notes on paying bank's claim.

"Upon payment of a loan, pledgor would be entitled "to possession of a note, or, if note was paid, to surplus."

Wilson v. *Little*, 2 N. Y., 448.
Farwell et al. v. *Nat'l Bank*, 90 N. Y., 483.
Bank v. *Hemingway*, 340 St., 381.
Worcester Nat'l Bank v. *Cheney*, 87 Ill., 615.

"If the paper has been pledged to a *bona fide* pledgee "in fraud of the true owner—as the pledgee has only a "lien for the amount of his debt, the true owner may, by "paying that debt and discharging the lien, repossess "himself of the instrument."

Dan'l Neg. Inst., Sec. 832.
Stoddard v. *Kimball*, 6 Cush., 469.
Chicopee Bank v. *Chapin*, 8 Met, 40.

Appellant's counsel seemed to misapprehend the nature of Mr. Rice's cross-bill, which is found in full on pages 42 to 46 of the record. After setting forth all the facts, the second paragraph of the prayer is as follows:

"That if for any reason the court shall not grant the "above prayer the said judgment shall be vacated, an- "nulled and set aside upon the payment by your orator "to said Third National Bank of such sum or sums of "money as may be due to said bank from said S. G. "Hooker & Co., your orator hereby offering to pay, as "he has heretofore offered, to pay the amount due said "bank from said S. G. Hooker & Co. upon surrender to "him of said notes."

The decree instead of following the language of the prayer as to vacating the judgmen—provides that upon payment by Mr. Rice of the amount due the Third National Bank from Hooker & Co. Rice is entitled to have said two Couch estate notes delivered to him, together with an assignment of the judgment of said bank against said Foot. Said judgment to be satisfied of record by said Rice, upon the collection by him of said Couch estate notes, or enough thereon to satisfy the amount to be paid by said Rice to said bank. There is no decree in this case ordering the vacation of the judgment obtained by the Third National Bank against Foote, except the entire debt of the bank be first paid. The theory of the decree being, that when the bank receives its money in full, it then holds the surplus in trust for whoever shall be entitled to it; and this decree only determines who is

entitled to such surplus. Neither J. Irving Pearce nor James H. Rice were parties or privies in the suit at law between the Third National Bank and Ira Foote, and the only question now at issue is whether Pearce, as the voluntary assignee of Hooker & Co. is entitled to that surplus; or whether James H. Rice, the purchaser of these two notes from Foote shall take the money. It is too plain for argument, that the controversy between Pearce and Rice was not determined in the hearing had before Judge Blodgett. The court in that case only determined whether or not the Third National Bank, as innocent holders of these two notes was entitled to be paid, and the theory of the opinion is, that the transaction, being only gambling at common law, an innocent purchaser for value can collect his debt.

We have now paid that debt and rulings of Judge Blodgett are satisfied. A court of equity now steps in to determine which one of these two parties, Pearce or Rice, both being strangers to the judgment, is entitled to that surplus. We maintain, that inasmuch, as sections 130 and 131 of our criminal code have been clearly and strictly construed in a case involving the identical question, this court is bound by such construction, and every authority cited under paragraph 2 in appellant's brief is wholly immaterial to this issue.

The contention of the appellant, that the pleas filed by Mr. Pearce to the cross-bill of Rice is a bar, is not well taken. In the first place no such plea was filed by Mr. Pearce. The plea was filed only by the Third National Bank and not by Pearce as stated by appellant's counsel. The case was never set down for hearing upon the plea, as provided for in the equity rules; but the court on a final hearing, by its decree sustained the plea

to the extent of finding that Mr. Rice, the cross-complainant must pay the Third National Bank all that Hooker & Co. owed it, viz: $8,459 and that upon such payment Mr. Rice became entitled to said two notes, and the assignment of the judgment against Foote. (Rec., 59, *et seq.*)

Summing up this feature of the case we hold the following facts to be true:

1st. Appellees' claim as established by this decree is not barred by the judgment in case of *Third National Bank* v. *Foote.*

2d. This suit is between different parties for different object—about a different subject-matter—than was the above suit.

3d. Hooker, & Co. and appellant were not privies of Third National Bank so far as these suits are concerned.

4th. The money in dispute here—that is the excess of amount due bank was never litigated in above cause. The bank held any excess of amount due for which it obtained judgment in that case in trust for the lawful owner, the appellee in this case.

5th. There is no vice in the decree directing a surrender of the notes on payment of amount due bank. If its judgment for full amount of notes was valid it held excess of amount due as trustee for legal owner of it—the appellee.

If its judgment was only valid for amount due it then appellee as lawful owner of this excess was entitled to redeem notes on payment of its claim.

6th. The appointment of Jenkins as receiver did not

destroy Foote's title to excess of amount due bank nor affect his right to convey it.

SECOND. We contend that the original agreement between Foote and Hooker & Co., out of which the controversy in reference to the notes in dispute, grew, was not an agreement to deliver grain but an agreement to speculate in the fluctuations of the market price and to settle the differences in the value thereof. This was a gambling contract both at common law and under statute law of Illinois.

Hooker & Co., obtained no title to the notes in dispute, and Rice was entitled to recover the surplus.

That the court may be fully advised as to the Illinois statute in reference to such transactions as the one in dispute, we cite the following sections, under which appellee claims right to funds in dispute. The very facts in this case and these statutes have been fully considered by the Appellate and Supreme courts of Illinois, and these decisions firmly establish the gambling nature of the transaction between Foote and Hooker, Co., and appellees right to recover as found by the decree, hence we insert them in full.

We know no stronger decisions upon gambling contracts than the following Illinois, Appellate and Supreme courts decision on this very transactions.

Section 130, Revised Statutes of Illinois, is as follows:

"Whoever contracts to have or give to himself or an-
"other the option to sell or buy, at a future time, any
"grain or other commodity, stock of any railroad or
"other company, or gold, or forestalls the market by
"spreading false rumors to influence the price of com-
"modities therein, or corners the market or attempts so to

"do in relation to any of such commodities, shall be fined "not less than $10 nor more than $1,000, or confined in "the county jail not exceeding one year, or both; and all "contracts made in violation of this section shall be con- "sidered gambling contracts and shall be void."

Section 131 is as follows:

"All promises, notes, bills, bonds, covenants, contracts, "agreements, judgments, mortgages, or other securities "or conveyances made, given, granted, drawn or entered "into, or executed by any person whatsoever, where the "whole or any part of the consideration thereof shall be "for any money, property or other valuable thing, won "by any gaming, or playing at cards, dice or any other "game or games, or by betting on the side or hands of "any person gaming, or by wager or bet upon any race, "fight, pastime, sport, lot, chance, casuality, election or "unknown or contingent event whatever, or for the re- "imbursing or paying any money or property knowingly "lent or advanced at the time and place of such play or "bet to any person or persons so gaming and betting, or "that shall, during such play or betting, so play or bet, "shall be void and of no effect."

Section 132 is as follows:

"Any person who shall, at any time or sitting, by play- "ing at cards, dice or any other game or games, or by "betting on the side or hands of such as do game, or by "any wager or bet upon any race, fight, pastime, sport, "lot, chance, casualty, election or unknown or contingent "event whatever, lose to any person so playing or bet- "ting, any sum of money or other valuable thing, amount- "ing in the whole to the sum of $10, and shall pay or "deliver the same or any part thereof, the person so los-

"ing and paying or delivering the same shall be at liberty "to sue for and recover the money, goods or other valu- "able thing, so lost and paid or delivered, or any part "thereof, or the full value of the same, by action of debt, "replevin, assumpsit or trover, or proceeding in chancery, "from the winner thereof, with costs, in any court of "competent jurisdiction. In any such action at law it "shall be sufficient for the plaintiff to declare generally, "as in actions of debt or assumpsit for money had and "received by the defendant to the plaintiff's use, or as in "actions of replevin or trover upon a supposed finding, "and the detaining or converting the property of the "plaintiff to the use of the defendant, whereby an action "hath accrued to the plaintiff according to the form of "this act, without setting forth the special matter. In "case the person who shall lose such money or other "thing, as aforesaid, shall not, within six months, really "and *bona fide*, and without covin or collusion, sue, and "with effect prosecute for such money or other thing by "him lost and paid or delivered, as aforesaid, it shall be "lawful for any person to sue for and recover treble "the value of the money, goods, chattels and other "things, with costs of suit, by special action on the case, "against such winner aforesaid, one-half to use of the "county, and the other to the person suing."

Sec. 135 reads as follows:

"All judgments, mortgages, assurances, bonds, notes, "bills, specialties, promises, covenants, agreements, and "other acts, deeds, securities, or conveyances, given, "granted, drawn or executed, contrary to the provisions "of this act, may be set aside and vacated by any court "of equity, upon bill filed for that purpose, by the person "so granting, giving, entering into or executing the same,

"or by his executors or administrators, or by any creditor, "heir, devisee, purchaser or other person interested "therein; or if a judgment, the same may be set aside "on motion of any person aforesaid, on due notice thereof "given."

As we have stated heretofore, Ira Foote turned over to S. G. Hooker & Co. four notes of $5,000 each, made by the Couch estate, and the check of James H. Rice for $2,165.72 in payment of the account of S. G. Hooker & Co. against said Foote: all of which notes were guaranteed by Mr. Foote. He, Foote, gave one of those notes to Henry M. Tenney. Two of them are the ones in suit and the fourth one was transferred to Mr. Pearce in the assignment of S. G. Hooker & Co. to Pearce. Mr. Tenney brought suit upon the note he received against Ira Foote as guarantor, and the case was tried before the late Judge McAllister, without a jury, in the Circuit court of Cook county, and Judge McAllister wrote an opinion. This cause went to the Appellate court of Cook county and is reported under the title of *Tenney* v. *Foote*, 4th Bradwell's Reports, page 594. The facts proved were almost precisely like those proved in the case at bar, and this is what the court said:

"*Per Curiam.* This case was tried before the Circuit "court, without a jury, and Judge McAllister, who pre- "sided at the trial, on rendering judgment for the ap- "pellee, filed in the cause an opinion in which are fully "stated the reasons for his decision. We have been "furnished by the respective counsel with very elaborate "and exhaustive arguments, and have given the same our "careful consideration. As the result of our deliberations, "we are inclined to concur with and adopt Judge "McAllister's opinion as the opinion of this court, and

"upon the principles therein stated, the judgment of the "court below will be affirmed."

"Judgment affirmed."

McAllister, J., took no part in this opinion.

(The following is the opinion of McALLISTER, J., in this case delivered in the Circuit court of Cook county, and referred to in the above opinion.)

McALLISTER, J.: "This suit is to recover against "Foote, as guarantor of a note for $5,000 and interest, "made by the trustees of the Couch estate, payable to "Foote, and by him transferred to S. G. Hooker & Co., "and by them to plaintiffs. The defense is that the con- "sideration for the guaranty by defendant was an account "of S. G. Hooker & Co. against Foote, which arose out "of, and in performance of, an unlawful contract made by "them, whereby S. G. Hooker & Co., as commission "men, doing business on the Chicago Board of Trade, "should deal thereon for Foote in options, and settling "upon differences, contrary to the statute against gam- "bling.

"The case is submitted to the court for decision upon "the evidence, without a jury.

"It appears from the evidence, that in the latter part o "1874, at Chicago, S. G. Hooker & Co. were commission "men, doing business on the board of trade. Foote was a "mechanic, and, apparently, rather ignorant and inex- "perienced in matters outside of his own proper business. "He had, however, been seized with the desire to make "money fast and easy, and had employed one Adams to "buy a quantity of oats for him. The oats were re- "ceived and carried for some time. A loss ensued, and, "in his inexperience Foote had recourse to S. G. Hooker "to act for him in adjusting this loss. He did so; the

" loss was adjusted at $2,500 and Foote paid it. There-
" upon Hooker began to solicit Foote, if he wanted to
" deal any more, to employ him, saying he could make
" some money for him. Foote, fresh from his recent ex-
" perience, declared at once that he would handle no
" more grain; that he had no money to put up; but, if
" Hooker would deal for him in options and settle upon
" differences, he thought he would employ him. Hooker
" replied that he could, and an agreement was concluded
" to the effect that Hooker should go on and deal for
" Foote on the board, but with the distinct understanding
" that it should be only in options, and that no produce
" should be delivered or received on his account, but the
" transactions should be settled upon differences. This
" contract is fully proved, and without any conflict of evi-
" dence in reference to it.

" Hooker & Co. proceeded under and in performance
" of that contract, to deal for Foote on the board; kept
" it up for over a year, and until they rolled up an ac-
" count against him for differences, commissions, and
" money claimed to have been advanced, amounting to
" about $22,000. It appears that during the time of these
" dealings, Hooker & Co. obtained from Foote his note,
" payable to their order, for $15,000, but which they still
" had in their possession. On the final settlement Foote
" paid about $2,000 cash, and for the balance of the ac-
" count turned over to them as security notes made by
" the trustees of the Couch estate, payable to him,
" amounting in all to $20,000, the payments of which
" Foote guaranteed, Hooker & Co. returning to Foote
" his own note for $15,000. One of the Couch notes,
" so turned over, is the subject-matter of this suit.

" The statutes of this state against gambling are em-
" bodied in the criminal code in R. S. 1874; pp. 372–3.

"Section 130 declares as follows: 'Whoever contracts "to have or give to himself or another the option to sell "or buy, at a future time, any grain or other commodity, "stock of any railroad or other company * * * "shall be fined not less than $10 nor more than $1,000, "or confined in the county jail not exceeding one year, "or both; and all contracts made in violation of this sec- "tion shall be considered gambling contracts, and shall "be void.'

"The question whether or not the original contract "between Foote and Hooker & Co. falls within this stat- "ute, is the turning one in the whole case, so far as the "defense is concerned. There has been much difference "of opinion as regards the nature of the contract pro- "hibited. It must be, to fall within the prohibition, a "contract to have to one's self, or give to another, an "option to sell or buy some commodity at a future time. "The word 'option' is one much in use on the Chicago "Board of Trade, and probably has more than one sense "given to it there. Boards of trade, for dealing in the "principal products of the country, are of comparatively "recent origin. The system seems to have been bor- "rowed from, and, in its general features, modeled after, "the more ancient institution known as the Stock Ex- "change, in which many phrases, words and terms of "peculiar local meaning came into use; and it will be "found that many of these have been carried into and "adopted in boards of trade. Now the word 'option' "was in use long ago in the stock exchange, and seems "to have acquired a definite meaning. As there used, it "meant 'a stipulated privilege to a party in a time con- "tract, of demanding its fulfillment on any day within "the specified limit.' Webs. Dict. Ed. 1872, p. 917.

"In practice on the stock exchange, it was often the "intention of the parties that no stock should be delivered "but the transaction settled upon differences. This be- "came common, and the English statute was aimed at its "repression, because it was, in effect, gambling. Our "statute is directed against the same evil, and extends to "transactions in grain and other commodities as well as "stocks. So that the word 'option' as used in the stat- "ute here, taken with the context, means a mere choice, "right or privilege of selling or buying, and it is the con- "tracting for such choice, right or privilege of selling or "buying at a future time any commodity the statute was "intended to prohibit, as contra-distinguished from an "actual sale or purchase, with the intention of delivering "and accepting the commodity specified. The statute "was passed from motives of public good, and to repress "an evil. Hence, it follows from established rules of law, "and their analogies in such cases, that no matter what "form the transaction bears as to the terms of the con- "tract, still, if such form be colorable only, and the real "intention of the parties be that there is to be no sale of "the article; no delivery or acceptance of it, but the tran- "sactions to be adjusted only upon differences, it is a "gambling transaction within the statute.

"In *Grizewood* v. *Blane*, 11 C. B. 73, E. C. L. Reports, "538, suit was brought upon a contract for the sale of "shares of stock. The defense was that it was a gamb- "ling transaction under a British statute like ours. There "was a contract in form, but the Chief Justice left it to "the jury to say what was the plaintiff's intention, and "what was the defendant's intention at the time of mak- "ing the contract, whether either party really meant to "purchase or sell the shares in question, telling them that

"if they did not, the contract was, in his opinion, a gamb-
"ling transaction, and void.

"The jury found for the defendants. Of course there
"were circumstances in evidence tending to show their
"intention. On motion for new trial before the full bench,
"the direction of the Chief Justice to the jury was held
"to be right, the court holding that the intention of the
"parties that there should be no delivery of the stock,
"and that they should settle upon differences, rendered
"it a gambling transaction and void. *Steers* v. *Gashley*,
"6 Durnf. and East., 61; *Brown* v. *Turner*, 7 Id., 630.

"In the case at bar, the intention of the parties that
"there should be no real sales or purchases or delivery,
"or reception of any commodity, is made manifest by
"the very terms of the arrangement between them. It
"was, therefore, a mere engagement on the part of
"Hooker & Co. to gamble for Foote. This contract,
"tainted in its inception, was the source of authority be-
"tween the principal and the brokers; and the account,
"which was the consideration for the guaranty, arose
"out of that employment, and was necessarily affected
"with the taint of the original contract. In *Fisher* v.
"*Bridges*, 3 Ellis & Blackburn, 642, the action was
"upon a covenant in a deed to pay the plaintiff
"£630. The defense was that the covenant was security
"for the payment of part of the purchase money of real
"estate sold by plaintiff to defendant, to be by the latter
"disposed of by lottery, contrary to the statute which
"plaintiff well knew at the time of the sale. The jury
"found for the defendant, but the Queen's Bench gave
"judgment for the plaintiff, notwithstanding the verdict,
"on the ground that the covenant being under seal, no
"consideration was necessary. On error to the ex-

"chequer chamber, that judgment was reversed, and "judgment given for defendant, because the original "transaction was tainted with illegality, and the covenant "being connected therewith was affected with the same "taint, and therefore void. In speaking of the covenant "the court said: 'It springs from and is the creature of "the illegal agreement, and, as the law would not en- "force the original illegal contract, so neither will it allow "the parties to enforce a security for the purchase "money, which, by the original bargain, was tainted "with illegality.' Besides the authorities cited by the "court in that case, may be cited numerous American "authorities to the same effect. *Buck* v. *Albee*, 26 Ver- "mont, R. 184. See Metcalfe on Contracts, 563 to "267."

"If Hooker & Co. had sued Foote on the account, they "would be compelled, in order to recover, to show their "authority—their employment to act for him. To do so, "they would be compelled to prove the original agree- "ment. 'The test as to whether a demand connected "with an illegal transaction be capable of being enforced "at law, is whether the plaintiff must rely on such trans- "action in order to establish his case.' Chitty on Con- "tracts, 730, and cases in notes. Therefore they could "not recover upon the account. It was urged, in argu- "ment, that part, at least, of the items of the account ac- "crued from transactions that were not illegal in any "point of view. Conceding this to be so, still, if any of "them accrued under the original contract, and I think "most of them did, still, the whole account being the "consideration for the guaranty, it would be void. No "rule of law is better established than that if any part of "an entire consideration is illegal, the whole contract is

" void. Chitty on Contracts, 730, and cases in notes.
" Section 131 of the statute makes void the contract or
" security if any part of the consideration arises out of a
" gambling transaction. *Henderson* v. *Palmer*, 71 Ill.,
" 579.

" It is immaterial whether plaintiffs be *bona fide* hold-
" ers of the note or not, if the contract between Hooker
" & Co. and Foote was a gambling transaction, and with'n
" the statute against gambling, because the statute itself
" renders void all contracts, notes, bills or other securities,
" where the whole or any part of consideration arises out
" of a gambling transaction. Section 136 declares that
" no assignment shall in any manner effect the defense
" of the person making such note or bill. *Chapin* v. *Dake*,
" 57 Ill., 296.

" Perceiving no reason why this species of gambling,
" though wearing the more respectable aspect of busi-
" ness, should be looked upon with any less disfavor by
" the courts than any other species, I am constrained by
" the facts of this case to sustain this defense."

This cause went to the Supreme court of the State of Illinois, and will be found in Vol. 95, page 99, and the Supreme court deciding several technical questions raised, held that notice to Hooker of the gambling nature of this business was notice to his firm, and closed their opinion as follows:

" We may add in conclusion, we see no objection to
" the law as announced in the opinion adopted by the
" Appellate court, and written by the circuit judge, who
" was formerly a distinguished member of this court.

Tenney v. *Foote*, 4 Brad., 594.

" Like doctrine on the principal question will be found
" in

Pickering et al. v. *Pease*, 79 Ill., 328.

" We held in *Henderson* v. *Palmer*, 71 Ill., 582, where " part of an entire consideration for a promise is illegal, " the whole contract is void.

" The judgment is affirmed."

Ira Foote, after making a demand, brought a suit in trover in the Circuit court of Illinois, to recover the five thousand dollar note which S. G. Hooker & Co. had transferred to J. Irving Pearce, their voluntary assignee. The cause was tried before Hon. Thomas A. Moran, without a jury, who held for the plaintiff, which finding was affirmed by the Appellate court of Illinois, and then on appeal to the Supreme court, and is reported in the 113th Illinois, page 228.

The opinion of the court by Mr. Justice SCOTT, is as follows:

" This case is one of more than usual importance, on " account of the sum involved, which is quite consider- " able, and on account of the principles involved in the " decision. There can be no controversy in this court " concerning the facts. They must be regarded as hav- " ing been settled by the finding and judgment of the " trial and Appellate courts. This much is frankly con- " ceded by counsel, and the position is taken, if the case " shall now be considered as on a demurrer to evidence; " that is, conceding the truth of all the evidence tends to " establish in favor of plaintiff, the facts do not establish, " in law, a right to recover. The defendant does not " claim he is an assignee of the note for value. It came " to him from Hooker & Co., to whom it had been " assigned by plaintiff, among the assets of that firm that " were assigned to him for the benefit of their creditors. " It is plain the defendant stands in the shoes of his

"assignors, and in the further consideration of the case "it will be most convenient to treat it as though the action "had been brought against Hooker & Co. The case "naturally falls into two parts: First, is the contract "which has been found by the trial court to exist between "plaintiff and Hooker & Co. a 'gambling contract,' as "those terms are used in the statute, and hence void; and "second, if the contract shall be held to be obnoxious to "the statute, since plaintiff has delivered the note under "that contract, can he, under the statute, recover its "value from Hooker & Co., or, what is the same thing, "from their assignee? At the outset this court disclaims "any right to review controverted questions of fact. "The issues having been found for plaintiff by the lower "court, it will be understood that all the facts the evi-"dence tends to establish in his favor will, as upon a "demurrer to evidence, be held to have been so found "for him.

"Looking into the evidence to ascertain that which it "tends to prove, it is seen that the contract is or was be-"tween plaintiff and Hooker & Co., out of which the "present litigation ultimately sprang. As respects the "original contract between plaintiff and Hooker & Co., "Mr. S. G. Hooker, a member of the firm, testified that "plaintiff said to him: 'I don't want to pay for any "property. I want to trade in options exclusively. I "don't want to pay for any cash grain.' To which wit-"ness replied: 'You shall not. I will trade with you in "differences. And again, the plaintiff further said to "him: 'I don't ever want to pay for any more prop-"erty. I don't want to carry any more property on the "board of trade. I want to trade exclusively in differ-"ences in options, betting on the market." To which

"witness answered: 'I agreed to do just exactly that "thing for him.' On being asked, 'What thing?' the "witness said, 'To trade in differences and in options, "and to settle upon profit and loss upon the fluctuations "of the market,—guessing or betting on it.' Plaintiff "states the contract substantially in the same way. He "says: 'I told him (Hooker) I didn't want to buy any "grain, no lard, no pork, or anything of the kind. He "said he could make money in speculation—for instance, "buy for this month for delivery next month, then settle "on differences. If there was a loss, I had to pay it; "and if there was a gain, he would pay it to me.' The "plaintiff further says neither Mr. Hooker nor Mr. Lin- "coln had any authority from him to deal in any other "way except to settle on differences. Hooker says the "contract with plaintiff was made on behalf of his "firm, of which he was the head, and within five or six "days after the making of it he informed Mr. Lincoln, "his partner, of the arrangement he had made with "plaintiff. It is due, however, to Mr. Lincoln, to say "that he denies all knowledge on his part that the firm "had contracted to deal in options with plaintiff, but it is "freely and fully admitted by Hooker the contract was "made with the firm, and the trial court must have found "such was the contract, and that finding is, of course, "conclusive on this court.

"It is plain that under the contract between plaintiff "and the firm of Hooker & Co., it was not in the con- "templation of the parties any actual purchases or sales "of grain or other commodities should be made for "plaintiff, or on his behalf. Indeed, it was expressly "agreed none should be made. All the speculating that "was to be done was to be in differences in options, or,

"as the parties termed it, 'betting on the market.' Of "course it was expected by the parties that such pur- "chases and sales of grain or other commodities that "should be made, were to be made on the board of trade. "As was said by this court in *Pixley* v. *Boynton*, 79 Ill., "351, the true idea of an option is what are called, in the "peculiar language of the dealers, 'puts' and 'calls'. "A 'put' is defined to be the privilege of delivering or "not delivering the thing sold, and a 'call' is defined "to be the privilege of 'calling for or not calling for' "the thing bought. 'Optional contracts,' in this sense, "are usually settled by adjusting market values, as the "party having the 'option' may elect. It is simply a "mode adopted for speculating in differences in market "values of grain or other commodities. It must have "been in this sense the term 'option' is used in the "statute. Such a contract is obviously fictitious, having "none of the elements of good faith, as in a contract "where both parties are bound, and is defined by statute "as a 'gambling contract.' Fictitious purchases or sales, "such as were in the contemplation of the parties, were "as nothing, and it is a matter of no consequence where "it is pretended they were made, whether on the Board "of Trade or elsewhere.

"It would have been quite as well, and would have "conformed as nearly to the contract of Hooker & Co., "had they simply entered upon their books they had "made such purchases or sales on behalf of the plaintiff, "without going upon the board of trade and claiming "they had made such purchases and sales, and on return- "ing made such entries. 'Betting on the market' could "be done just as well in that way as in any other. It "needs no illustration to make it apparent the contract

"between the plaintiff and Hooker & Co, as the trial "court must have found it from the evidence, comes ex- "actly within the meaning of section 130 of the criminal "code, that declares: 'Whoever contracts to have or "to give to himself or another the option to sell or buy "at a future time any grain or other commodity,' shall "be subject to a fine or imprisonment and 'all contracts "made in violation of this section shall be considered "gambling contracts, and shall be void.' It is seen that "statute forbids any one to contract to have, or to give "to himself, or to contract to give to another, the privi- "lege to deal in options. That is precisely what Hooker "& Co. did. They contracted to give to plaintiff the priv- "ilege to deal in options and settle with them differences, "as indicated or determined by the fluctuations of the "market. That is one of the offenses against which "the statute is leveled. Of course, the party who "contracts to have the option is equally guilty with the "party who contracts to give it. It is wholly immaterial "whether plaintiff knew 'optional contracts,' such as his "agreement with Hooker & Co. contemplated, were de- "fined by statute to be 'gambling contracts.' His "ignorance of the statute in that respect did not change "the character of the contract. Undoubtedly, under the "contract between the parties, Hooker & Co. may have "made fictitious contracts with persons, unknown to "plaintiff, on the board of trade, nominally, at least, on "behalf of plaintiff, for the purchase or sale of grain, and "may be other commodities, which were settled by dif- "ferences in market values, in which transactions the "losses greatly exceeded the profits. Finally, Hooker & "Co. rendered plaintiff an account of such transactions, "which included losses and commissions claimed to be

"due to them, growing out of these purchases and sales,
"amounting to a large sum—perhaps over $22,000. It
"appears that plaintiff, by his attorney in fact, in settling
"this large demand made against him, paid Hooker &
"Co. $2,000 in cash, and assigned to them, with his
"guaranty of payment written on the back, four notes of
"$5,000 each, made by the trustees of the Couch estate
"to plaintiff. One of these notes passed to defendant,
"under the assignment made by Hooker & Co. for the
"benefit of their creditors, and is the note in controversy.
"It is admitted that before this suit was brought, plaintiff
"demanded the note of defendant, and on his refusal to de-
"liver it this action was brought in the Circuit court, and the
"recovery was for its face value and accumulated inter-
"est. It is obvious that under section 131 of the Crimi-
"nal Code, which declares void all promissory notes,
"bills, or other securities made, or given, or executed,
"where any part of the consideration thereof is money or
"any valuable thing won by wager upon any unknown
"or contingent event whatever, or made, or given, or ex-
"ecuted, for reimbursing any money knowingly lent or
"advanced, at the time and place of such bet, to any per-
"son so betting, the assignment and guaranty of the
"note in controversy to Hooker & Co., under the cir-
"cumstances proven, was void, and passed no title what-
"ever to them or to their assignee, the defendant. It
"was so declared by this court in *Tenney* v. *Foote*, 95
"Ill., 95.

"Assuming, then, as must be done, the facts were cor-
"rectly found by the trial court, the contract between
"plaintiff and Hooker & Co., was, in law, a 'gambling
"contract,' and hence void, the question arises on the
"other branch of the case, whether plaintiff, either at

"common law or under the statute of this state, can re-
"cover that which he paid to Hooker & Co. as money
"or property lost in a gambling transaction, from defend-
"ant, in whose hands the specific property is found. As
"the solution of this question depends solely upon the con-
"struction that is to be given to the statute of this state on
"this subject, no investigation will be made as to what the
"common law was in such cases. So much of section 132
"of the Criminal Code as has any application to the
"point being considered, is as follows: 'Any person who
"shall, * * * by any wager or bet upon any * * *
"contingent event, lose to any person so * * * betting,
"any sum of money or other valuable thing (amounting
"in the whole to the sum of $10), and shall pay or de-
"liver the same, or any part thereof, the person so losing
"and paying or delivering the same shall be at liberty to
"sue for and recover the goods, money, or other valuable
"thing so lost and paid or delivered, or any part thereof,
"or the full value of the same, by an action of * * *
"trover, * * * from the winner thereof, with costs,
"in any court of competent jurisdiction.' It is said, if it
"shall be conceded the contract between plaintiff and
"Hooker & Co. were a 'gambling contract' within the
"contemplation of the statute, this provision of section
"132 does not apply to, nor does it authorize an action
"against Hooker & Co., for the simple reason they had
"not won any money or valuable thing from plaintiff
"upon any gambling transaction, or, more tersely stated,
"the argument is, the note in controversy 'was not paid
"upon a bet or gambling transaction to the winner of such
"bet.' The position can hardly be maintained. The
"agreement, as the trial court was authorized to find it,
"is, that Hooker & Co. contracted to give plaintiff the

"privilege to deal in options with or through them, and "'if there was a loss,' plaintiff was to pay it to them, and "'if there was a gain,' Hooker & Co. were to pay it to "plaintiff, and for their services they were to be paid a com- "mission. The suggestion that Hooker & Co. merely acted "as the agents for plaintiff in these unlawful transactions, "may be rejected at one as having nothing in its support. "There is and can be no such thing as agency in the "perpetration of crimes or misdemeanors, or, indeed, in "the doing of any unlawful act. All persons actively "participating are principals. Treating all the parties "engaged as principals, it is immaterial to which one "the money or property lost was in fact paid or deliv- "ered—whether to Hooker & Co. or to any of the par- "ties on the Board of Trade with whom they may have "made fictitious contracts, and lost—and paying to either "principal is, in law, paying to the 'winner.' But aside "from this view, the contract, in express terms, provides "the losses, if any, should be paid to Hooker & Co., and "not to the person with whom they might have had "'gambling contracts' on the Board of Trade, or else- "where, and the money and notes were so paid and de- "livered to Hooker & Co. as the contract provided "should be done. Plaintiff could not know with whom "they may have had such transactions. It was a matter "about which he had no concern, for the reason he was "obligating to pay the losses to Hooker & Co. and to no "one else. So far as he was concerned, they were the "'winners' of his money and property. Plaintiff did "not, and could not, know any one else in the transac- "tions. It was from Hooker & Co., and nobody else "that plaintiff obtained the contract to deal in options, "and despite all subtle reasoning on this branch of the

"case, it is apparent Hooker & Co. are the actual "'winners' of plaintiff's money and property, and he "neither knew nor cared to whom they may have paid "any portion or all of that which they obtained from him.

"But there is another view that may be taken that "leads to the same conclusion,—that is, under the most "favorable construction that can be given to the evidence "the contract between the parties was, that plaintiff "would reimburse Hooker & Co. for any losses they "might sustain in optional or gambling contracts made "on the Board of Trade, in consideration that if any gains "should be made in such dealing, Hooker & Co. would "pay the same to plaintiff, and that plaintiff would pay "them a commission for their services. Such a contract "is obviously unlawful, as being inhibited by statute. "(Crim. Code, Sec. 132.) The wager in this case was "upon market values within a given time, or on a given "day. What is a wager? It is a contract by which two "or more parties agree that a certain sum of money or "other valuable thing shall be paid or delivered to one of "them on the happening of a certain event. That is "precisely what was done in this case. The betting was "as to market values within stated periods, and was evi-"dently done by Hooker & Co. with others whom they "may have met on the Board of Trade. It is not prob-"able the parties that won in such transactions from "Hooker & Co. had any knowledge of plaintiff. They "looked alone to Hooker & Co. for payment of their "winnings, and it is said they were paid by Hooker & "Co. Plaintiff's contract—if he made any—to reim-"burse Hooker & Co. for any such losses paid by them, "is not only contrary to the statute, but is forbidden by "a sound public policy, and is therefore void. Although

"the statutes being considered are highly penal, "there is no warrant for construing them with any un- "reasonable strictness. They ought rather to have a "just, if not liberal, construction, to the end the legisla- "tive intention may be accomplished—to prohibit all "dealings in options in grains or other commodities. "Nothing is productive of more mischievous results. "Considerable fortunes secured by a life of honest indus- "try have been lost in a single venture in 'options.' The "evil is all the more dangerous from the fact it seem- "ingly has the sanction of honorable commercial usage "in its support. It is a vice that has in recent years "grown to enormous proportions. Legitimate transac- "tions on the Board of Trade are of the utmost import- "ance in commerce. Such contracts, whether for imme- "diate or future delivery, are valid in law, and receive its "sanction and all the support that can be given to them. "It is only against unlawful 'gambling contracts' the "penalties of the law are denounced, and no subtle "*finesse* of construction ought to be adopted to defeat "the end it is to be hoped may be ultimately accom- "plished.

"The point is made the declaration is not framed un- "der the statute, and is not sufficient in law to support a "judgment on the evidence contained in the record. "The defect insisted upon is, it does not contain the words "'whereby an action hath accrued to the plaintiff accord- "ing to the form of this act.' The declaration is in the "usual form in trover, and was evidently drawn from "approved precedents. It is sufficient in law to support "a judgment in trover. But if it were insufficient, "under the evidence given, that objection ought to have "been pointed out on the trial, as should have been done

" by special demurrer had the facts been stated in the " declaration, when an amendment would have been al- " lowable instanter. After verdict the declaration is " clearly sufficient, under the statute of 'Amendments " and Jeofails' (sec. 6, div. 9), which declares no judg- " ment shall be arrested or stayed after verdict for the " want of any allegation or averment on account of " which omission a special demurrer could have been " maintained. It is now too late to insist upon the objec- " tion made, even if it might have been sustained at the " trial had it been made specifically.

" It is also made an objection to the present judgment; " it is rendered against the defendant individually, where- " as he was sued as assignee of Hooker & Co., and if any " judgment in this action was justifiable, it should have " been rendered against defendant in his representative " capacity, and not otherwise. A sufficient answer to the " position taken is, the supposed fact on which the error " is assigned has really no existence. Defendant was not " sued in his representative character, but as an indi- " vidual, for his alleged personal tort. Besides that, if he " is guilty of a conversion of plaintiff's property, it is his " own wrongful act, and not that of his assignors. It is " a matter of no consequence the descriptive appellation " of assignee is affixed to defendant's name. It does not " indicate he was sued otherwise than for his personal " wrongful act. The suit was properly brought, and if " it can be sustained it must be done against defendant as " an individual and not against him as the representative " of his assignors.

" As to the fifth error assigned, viz: the Appellate " court erred in not holding the Circuit court erred in " denying the motion for a new trial, based upon the af-

"fidavits filed and sworn to in the cause, there is clearly "nothing in it. The granting of a new trial, under the "circumstances disclosed by such affidavits, was a matter "resting in the sound discretion of the Circuit court, and "it is only when this court is able to say there has been "an abuse of such discretion, it will interpose. After the "fullest and most careful examination, nothing is discov- "ered that would warrant such interference in the pre- "sent case.

"The judgment of the Appellate court must be af- "firmed, which is done."

It is true Judge Blodgett rendered his decision long before the opinion in *Pearce* v. *Foote*, above cited, was commenced, and the language in section 130 of Illinois Criminal Code. "Whoever contracts to have or give himself or "another the option to sell or buy, etc.," had not been fully and fairly construed by the Supreme court of Illinois.

Hitherto the bar generally in Illinois had construed this language as meaning "puts" and "calls" and the learned judge so treated this statute. Also the language of section 132 Criminal Code had not received a construction as to the gambling nature of a contract coming under section 131, hence Judge Blodgett in deciding the case of *Third National Bank* v. *Foote*, in the Circuit court held that an innocent holder of a promissory note could not be defeated by a plea of gambling at common law. The decisions and opinions of the highest tribunal in Illinois rendered in two cases, and upon two of the very notes given by Foote to Hooker & Co. have established these two plain propositions.

First. That transactions such as was held between Foote and Hooker & Co., were under section 130, of Illinois Criminal Code, option deals and gambling.

Second. That under Section 132, of the same criminal code, Mr. Foote can recover the money paid, or property back from Hooker & Co., or his voluntary assignee.

And these decisions were both rendered after great deliberation, and have never been reversed or modified, and they stand as the judicial interpretation of these statutes, and a rule of property in Illinois to-day.

The opinion quoted in *Pearce* v. *Foote*, 113 Ill., 228, is sustained in many respects by the ruling of this court in *Irwin* v. *Williar*, 110 U. S., 499, where the court say:

"The generally accepted doctrine in this country is, as "stated by Mr. Benjamin, that a contract for the sale of "goods to be delivered at a future day is valid, even "though the seller has not the goods, nor any other means "of getting them than to go into the market and buy them; "but such a contract is only valid when the parties really "intend and agree that the goods are to be delivered by "the seller and the price to be paid by the buyer; and, if "under guise of such a contract, the real intent be merely "to speculate in the rise or fall of prices, and the goods are "not to be delivered, but one party is to pay to the other "the difference between the contract price and the mar-"ket price of the goods at the date fixed for executing "the contract, then the whole transaction constitutes "nothing more than a wager, and is null and void."

The following decisions in Illinois and other states, sustain this doctrine:

Lyon v. *Culbertson*, 83 Ill., 33.
Pickering v. *Cease*, 79 Ill., 328.
Beveridge v. *Hewitt*, 8 Ill. App., 467.
Calderwood v. *McCrea*, 11 Ill. App., 543.
Cobb v. *Prell*, 15 Fed. Rep., 774.

North v. *Phillips*, 89 Penn. St., 250.
Barnard v. *Backhaus*, 52 Wis., 593.
Grigerwood v. *Blanc*, 11 C. B., 526.
Kirkpatrick v. *Bonsall*, 72 Penn. St., 155.
Lyons Nat. Bank v. *Oskaloosa P. Co.*, 66 Iowa, 41.
Flagg v. *Baldwin*, 38 N. J. Eq., 219.
Gove v. *Hervey*, 114 Mass., 80.
Bigelow v. *Benedict*, 70 N. Y., 202.

Third. This being a transaction in violation of the Statute of Illinois the construction thereof by the Supreme court of Illinois will be adopted by the courts of the United States.

Jud. Act 1789, Sec. 34.
Union Bank v. *Kansas City Bank*, 136 U. S., 223.
Lloyd v. *Fulton*, 91 U. S., 479.
Jaffrey v. *McGehee*, 107 U. S., 361.
Detroit v. *Osborne*, 135 U. S., 492.
Randolphs' Ex. v. *Quidrick Co.*, 135 U. S., 457.
Allen v. *Massey*, 17 Wall., 351.
Olcott v. *Bynum*, 17 Wall., 44.

Since writing the foregoing we have seen a copy of appellant's brief, upon page 26 of which the claim is made that James H. Rice cannot maintain his cross-bill, because counsel say he does not file his cross-bill as a "creditor, "heir, devisee, purchaser or other person interested "therein."

Mr. Rice states, in his bill (Rec., 44): "That said "Ira Foote transferred and assigned all his interest for a "valuable consideration in said two $5,000 notes to the

"complainant, and that your orator is now a *bona fide* "owner of the two notes thus transferred to the said "Third National Bank."

On July 14, 1885, Mr. Rice, on cross-examination, (Rec., 157,) was asked what was the consideration of that assignment, and he answered: "The consideration "was the taking care of Mr. Foote. I have spent a "good deal of money on him, taking care of him. He "had no money of his own, except what I let him have. "He has been an invalid and had to have somebody to "look after him and have somebody to attend to him"— and further along he says he has paid out for Mr. Foote a good many thousands of dollars, and on page 158 of the record Mr. Rice says: "There are a good many "other considerations besides the advancement of money "that Mr. Foote is indebted for, he has made his home "with me; been provided with nurses and doctors and "taken good care of. Outside of the friendship I have "for Mr. Foote there would be no money consideration. "for what I have gone through with."

And on page 161 Mr. Rice continuing, says: "Mr. "Foote has made his home with me for nine years. He "has been very feeble, especially for the past two years. "He is in his sixty-eighth year. He has had to travel "for his health, and has been away both winter and "summer. He has had no money within the last five "years except what I have furnished him; no nurses or "doctors except what I have paid for since he has been "sick."

The assignment from Foote to Rice is set out on page 408 of the record and it reads: "For value received, I "hereby sell, assign, transfer and set over unto James H. "Rice, etc." (describing the two notes).

What do counsel mean by asserting that the two notes had become merged into a judgment? The two notes were made by the estate of Wm. Couch, and they were good, and no suit had then, or since has been commenced against the makers of these notes. The judgment in the United States Circuit court was only against Ira Foote as guarantor, and when the Third National Bank was paid the amount due, somebody was entitled to the balance due upon these notes. That balance is the bone of contention in this suit, and if the construction of sections 130 and 132 of the Illinois statute are properly construed, the balance or surplus in those two notes must go to James H. Rice.

If it was material to support the proposition that under the Illinois statute a bill in chancery will lie to vacate a judgment rendered on a contract based upon a gambling consideration, we would cite the court the case of *West* v. *Carter*, 129 Ill., 249, which holds that a bill in chancery will lie to set aside a judgment based on a gambling transaction, notwithstanding a defense was made to the original suit, and this decision is based on sections 131 and 135 of the criminal code of Illinois. In that opinion the courts say:

"And where a judgment had been obtained at law "upon a promissory note given for money won at gam- "ing, it was held, upon bill filed by the maker, Sec. 135 "of the act, that the judgment was void, and it was ac- "cordingly set aside." (*Mallett* v. *Butcher et al.*, 41 Ill., 382,) It was there said: "It was the intention of the "legislature to make all judgments, like the contracts on "which they are founded, absolutely void—of no vitality "—and they cannot be vitalized by the action of the "court." This being so, it can make no difference that

a defense was, or might have been made in the suit at law to recover judgment upon the illegal contract. The rule in equity that courts in chancery will not take jurisdiction where there is an adequate defense or remedy at law, must yield to the requirements of this statute, that relief may be granted in a court of equity to vacate and set aside judgments and contracts obtained in violation of this provision; and it was so held in the case last cited, overruling *Abrams et al.* v. *Camp*, 3 Scam., 290.

In the view, however, that all take of the case at bar, such an authority is not required, because the judgment of the law court, or at least all that is due upon it, must be paid by the decree rendered in this cause, and we are only contending for the surplus in the two $5,000 Couch estate notes after the bank is paid in full.

We submit that the decree as rendered is without error, and ought to be affirmed.

LEWIS H. BISBEE,
ROBERT H. KERN,
FRANK F. REED,
Solicitors for Appellee.